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OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

THE SO-CALLED MODEL CODE
ITS DEVELOPMENT AND MODIFICATION

By
Harry Mulkey

WORK MATERIALS NO. 36

NRA ORGANIZATION STUDIES SECTION
March, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

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F O R E W O R D

This study of "The Development of the Model Code and Model Provisions for Codes" was prepared by Mr. Harry B. Mulloy of the NRA Organization Studies Section, Mr. William W. Bardsley in charge.

The subject has been treated from an historical point of view. The report discusses in chronological order the events which culminated in the passage of the National Industrial Recovery Act, the early problems which were present relative to code making, the policies involved in the formulation of the Model Code of November 2, 1933, subsequent issues of the Model Code and the promulgation of model provisions amendatory thereof, and its reception by industry. The study methods pursued by the author are realted in Appendix I.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall, Director
Division of Review

March 17, 1936

DEVELOPMENT OF THE MODEL CODE AND MODEL PROVISIONS FOR CODES

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1	"Model Code" for Self-Governing Industries under "The National Industrial Recovery Act," issued by the National Association of Manufacturers, May 31, 1933.
2	Basic Code for Substitutions Before the Policy Board in PRA.
3	Issue of Model Code of August 7, 1933, by W. P. Farnsworth.
4	Issue of Model Code of August 10, 1933, by W. P. Farnsworth.
5	Types of Unfair Competition - Practices Condemned in Federal Trade Commission's Orders to Cease and Desist. (Abstracts from the Federal Trade Commission's Annual Report, June 30, 1934).
6	Confidential Report of the "NRA-Commerce" Committee on an American Basic-Code of Fair Practices.
7	An Ideal Charter for Trade Associations, issued by the Bureau of Foreign and Domestic Commerce.
8	"Model Code" or Suggested Outline for Codes, draft of November 6, 1933.
9	" Model Code" or Suggested Outline for Codes - draft of October 1, 1933.
10	"Model Code" or Suggested Outline for Codes - draft of October 25, 1933.
11	"Model Code" or Suggested Outline for Use in Code Drafting, Draft of April 3, 1934.
12	Executive Order No. 6464, November 27, 1933. Rules and Regulations Relating to Commercial Bribery Provisions.
13	Executive Order No. 6479, December 7, 1933, Providing for the Submission of Statistical Information by Persons Subject to Codes of Fair Competition.
14	Office Memorandum No. 228, June 7, 1934. Open Price Filing, Costs, Price Cutting and Accounting Provisions in Codes.
15	Executive Order No. 6606-F, February 17, 1934, Prescribing Rules and Regulations for the Interpretation and Application of Certain Labor Provisions of Codes of Fair Competition as They May Affect Handicapped Workers.
16	Office Order No. 71, March 14, 1934. Standards for Health and Safety.
17	Administrative Order No. X-51, June 15, 1934. Safety and Health

Standards.

18 Office Memorandum No. 233, June 12, 1934. Premiums.

19 Office Memorandum No. 310, December 6, 1934. Premiums and "Free Deals".

20 Executive Order No. 6673, April 14, 1934. Making Provision for a Clause in Codes of Fair Competition Relating to Collection of Expenses of Code Administration.

21 Office Memorandum No. 267, July 20, 1934. Classification of Customers.

22 Office Memorandum No. 326, January 5, 1935. Advertising Allowances.

23 Office Memorandum No. 331, January 29, 1935. Liquidated Damages.

24 Executive Order No. 6711, May 15, 1934. Prescribing a Regulation Prohibiting Dismissal of Employees for Reporting Alleged Violations of Codes of Fair Competition.

25 Executive Order No. 6949, January 22, 1935. Non-Waiver of Constitutional Rights in Connection with Codes of Fair Competition.

26 Executive Order No. 6711-A, May 15, 1934. Prescribing Rules and Regulations for the Interpretation and Application of Certain Labor Provisions of Codes of Fair Competition as They May Affect Certain Homeworkers.

27 Recommended Trade Practice Provisions Formulated by the Code Planning Committee, May 20, 1935.

28 General Labor Provisions Formulated by the Code Planning Committee, May 22, 1935.

A GENERAL REVIEW

This study relates the events which culminated in the passage of the National Industrial Recovery Act, the early problems which were presented to the National Recovery Administration relative to the needs for and the policies involved in the formulation of each provision which was included in the "Model Code" of November 6, 1933; also subsequent issues of the Model Code and amendments thereto, which were issued in the form of Executive, Administrative, and Office Orders, and Office Memoranda.

As implied by its title, the Model Code was a guide or a model used by the personnel of NRA and members of industry connected with code making. The model provisions were formulated in order to obtain uniformity and to expedite the approval of codes.

The Introduction deals with some of the events which culminated in the passage of the Act; also the formulative of "A 'Model Code' for Self-Governing Industries under the 'National Industrial Recovery Act'", issued May 31, 1933, by the National Association of Manufacturers.

The reasons for the promulgation of the Model Code are discussed in Chapter I and Chapter II treats of its formulation.

Chapter III relates some of the facts concerning the official and unofficial issues of the Model Code.

Chapter IV sets forth its provisions. Policy and other N.R.A. pronouncements affecting its provisions are discussed in Chapter V.

Industry's reception of the Model Code is briefly related in Chapter VI.

THE DEVELOPMENT OF THE MODEL CODE AND MODEL PROVISIONS FOR CODES

INTRODUCTION

In the early spring of 1933, the economic situation had become very desperate and proposals for government action were being made by many groups and individuals. Direct relief for the unemployed, independent relief for the farmer, and a large program for public works were among those thrown into the "public forum" for discussion. It was obvious that in order to decrease unemployment and to increase purchasing power industrial establishments should cooperate and move forward together in a movement for a rapid expansion of productive activity.

The business depression which began in the fall of 1929 caused many Trade Associations to request aid from the Government. The depression had brought forward a number of plans for price fixing and production control which were in violation of the anti-trust laws; some of these plans had become known to the Department of Justice, and public action to enforce the anti-trust laws was in progress. In the early months of 1933 many groups were working in Congress and through the Chamber of Commerce of the United States, the National Association of Manufacturers and the American Federation of Labor, to aid in drafting some type of legislation which would temporarily remove the stringent provisions of the anti-trust laws in order to permit a partnership between Government and business. Industry and labor were sponsoring the partnership proposal, and were of the opinion that legislation permitting such an Act would be of great aid in helping business to get out of the depression. Certain individuals proposed a Government guarantee against loss to private construction enterprises as an inducement to stimulate activity in capital goods industries. Other groups advocated a program whereby under government leadership and guidance the establishments of the major industries by voluntary agreements among themselves could expand their schedules of production simultaneously for a definite period and at the same time subscribe to a schedule of minimum wages and maximum hours. This program was calculated to decrease unemployment and start the forces of recovery moving. Advocates of the latter view aided in drafting the earliest of the many bills which were discussed during the formative period of the National Industrial Recovery Act. Some of the bills proposed to modify the anti-trust laws with a view of eliminating "unfair and cut-throat" competition through concerted action by trade association.

On December 21, 1932, Senator Black of Alabama introduced a bill (S.5267) known as the "Five Day Week and Six Hour Day" Bill (*)

The vital provision of the bill is as follows:

"That no article or commodity shall be shipped, trans-

(*) Congressional Record, December 21, 1932, 2nd Session, 72nd Congress, p. 820.

ported or delivered in interstate or foreign commerce which was produced or manufactured in any mine, quarry, cannery, workshop, factory, or manufacturing establishment situated in the United States in which any person was employed or permitted to work more than five days in any week or more than six hours in any day, provided that, this section shall not apply to commodities or articles produced or manufactured before the enactment of this law."

March 10, 1933, Senator Black of Alabama introduced, in the first Session of the Seventy-Third Congress, a bill (S.158) (*) to prohibit shipment in interstate commerce of certain commodities and articles produced in establishments in which persons were employed more than five days per week or six hours per day. Industry, evidently fearful of the Black bill, favored the proposed legislation sanctioning voluntary agreements.

On May 17, 1933, President Roosevelt sent a special message to Congress (**),which read in part as follows:

"Before the Special Session of Congress adjourns, I recommend two further steps in our national campaign to put people to work.

"My first request is that the Congress provide for the machinery necessary for a great co-operative movement throughout all industry in order to obtain wide re-employment, to shorten the working week, to pay a decent wage for the shorter week and to prevent unfair competition and disastrous overproductions.

"Employers cannot do this singly or even in organized groups, because such action increases costs and thus permits cut-throat underselling by selfish competitors unwilling to join in such a public-spirited endeavor.

"One of the great restrictions upon such co-operative efforts up to this time has been our anti-trust laws. They were properly designed as the means to cure the great evils of monopolistic price fixing. They should certainly be retained as a permanent assurance that the old evils of unfair competition shall never return. But the public interest will be served, if with the authority and under the guidance of government, private industries are permitted to make agreements and code insuring fair competition. However, it is necessary if we thus limit the operation of anti-trust laws to their original purpose to provide a rigorous licensing power in order to meet rare cases of non-co-operation and abuse. Such a safeguard is indispensable."

(*) Congressional Record, March 10, 1933, 1st Session of 73rd Congress, p. 116.

(**) Congressional Record, May 17, 1933, 1st Session, 73rd Congress, p. 3349.

On the same day, Senator Wagner of New York introduced a bill (S.1712) for national industrial recovery (*). Several weeks of hearings were held by the committees of the Senate and House. In these hearings it became clear that what was contemplated was (1) concerted action by trade and industrial groups to end the intense competition then prevailing; (2) the setting up of standards of wages and hours of labor; and (3) giving the President a degree of over over business enterprises unparalleled in previous peace-time history of the country.

Immediately after the introduction of the National Industrial Recovery Bill in Congress, General Johnson, who had helped to draft the bill, in anticipation of its passage called in consultation Mr. C. Judkins, of the Trade Association Section of the Bureau of Foreign and Domestic Commerce, with reference to drafting information for distribution to the trade associations as to "what can business organizations do at once now the National Industrial Recovery Bill will soon become law?" General Johnson requested Mr. Judkins to formulate instructions within the boundaries of the proposed Act, which would be of aid to industry in drafting proposed codes.

At this time General Johnson's idea was that it would be better to limit code making to the major industries and not to permit small or unorganized industries to have separate codes. With this in mind, Mr. Judkins in conjunction with Dr. A. P. Haake of the National Association of Furniture Manufacturers, Mr. John C. Gall and Mr. Noel Sargent of the National Association of the Manufacturers, and representatives of the American Federation of Labor, studied the pending bill, and formulated a guide for use by industries in the preliminary drafting of codes, which was issued on May 31, 1933, by the National Association of Manufacturers as "A Model Code for Self-Governing Industries under the National Industrial Recovery Act". (Exhibit 1) This "Model Code" included (1) a chart giving the most important features of the bill; (2) a chart indicating what a trade association could do to prepare for the Act; (3) an introduction and notes containing further suggestions to members of industries; (4) "A Suggested Form of Outline for a Code of Fair Competition" (adapted from a code drafted by the National Lumber Manufacturers Association); and (5) a chart indicating a "breakdown" of the many divisions of the Lumber Industry.

General Johnson, on June 3, 1933, in an address to a gathering of business leaders called together by the National Association of Manufacturers, explained how he believed industry and labor would both be helped by the Act, and officially interduced the "Model Code for Self-Governing Industries." He said that this"Model Code," seemed to answer their wishes for something to do at once, that they should go back to their industries, call together their members, draft a plan which would be of benefit to employers and employees, and submit it for approval when the National Industrial Recovery Bill became a law.

About five thousand copies of this "Model Code" were printed and distributed by the National Association of Manufacturers. The Bureau of Domestic and Foreign Commerce, with the permission of the National

(*) Congressional Record, May 17, 1933, 1st Session, 73rd Congress, p. 3550

Association of Manufacturers, also printed several hundred copies and distributed them to industries and labor organizations.

The introduction of the "Model Code for Self-Governing Industries", in part, follows:

> "This is a preliminary outline. It is designed to aid industrial executives adapt trade associations to the immediate requirements under the National Industrial Recovery Act. A subsequent outline will be issued to meet any essential changes which may be made in the bill. (Although this outline touches upon all major requirements of a 'Code of Fair Competition,' the advice of legal counsel is urgently recommended properly to adopt the general suggestions herein given to the detailed requirements of each individual case.)"
>
> "No Code can fit all industries, but there are sufficient features in common to justify offering what may be termed a 'Preliminary Model Code.' This will have to be adapted to meet particular situations, as well as the rules, regulations and requirements which those charged with the administration of the Act may subsequently stipulate."
>
> "The Code which follows is designed for an industry made up of a number of closely related divisions which compete with each other or otherwise come into such intimate contact with each other in common markets that a common code and coordination is essential to them all."
>
> "The Lumber Industry, whose proposed form of organization is shown in connection with this Code, is an example of such an inclusive industry. The Furniture Industry provides another example, with its sub-groups - manufacturers of upholstery, case goods, tables, chairs, bedding, reed and fibre goods, etc."
>
> "For such industries, the 'Model Code' may be adopted practically as outlined."

A brief synopsis of the text of this "Model Code," of May 31, 1933, is as follows:

> Article I - "Purpose." Contains the purpose clause.
>
> Article II - "Participation." Provides that any member of industry may be extended the benefits of the code, but must accept his share of the cost and responsibility be becoming a member of the association. No provision is made for participation by non-association members.
>
> Article III - "Divisions of the Industry", for the purpose of administration. Provides that industries shall be divided into divisions, each division to designate and establish its own administrative agency; also provides for

the establishment of an Executive Committee in each division to administer the code, receive and adjust complaints, and consider proposed amendments to the code.

Article IV - "Division Regulations". Sets forth standards for labor, including Section 7 (a) of the Act. Includes provision for production control and for the establishment of methods of cost accounting and prohibits sales below reasonable cost.

Article V - "Emergency National Committee" Article III refers to this Committee as the one authorized to adopt and administer a code for a division if the division fails to perform its obligation. It was to be the general planning and coordinating agency of the industry.

Article VI - "Industry Regulations." This article empowers the Emergency National Committee to establish a marketing code with respect to (a) group selling; (b) classification of outlets or purchasers and recognition of standard and economically justifiable price differentials among them; (c) division of consuming territory into market areas, providing for plants best equipped to serve particular markets, to concentrate sales efforts in such districts; (e) simplification and standardization of products; (f) cooperative advertising for the industry; (g) collection and interchange of credit information; and (h) cooperative administration of insolvent debtors.

The Trade Practice rules suggested are as follows: Price discrimination, commercial bribery, misrepresentation, rebates, terms of sale, false invoicing, freight absorption, piracy of design, dumping, misbranding, free goods, and interference with contracts.

Article VII - "Statistics" Requires members of the industry to furnish, and the Emergency National Committee to gather, statistical information for the purpose of Administration.

Article VIII - "National Control Committee" Provides for the appointment of National Control Committee, to act as an Executive Agency for the Emergency National Committee and to be charged with the enforcement of the code, and with the duty of adjusting complaints, and considering proposed amendments to the code.

Article IX - "General" Prohibits interpretations or applications of code provisions so as to: promote monopolies, permit or encourage unfair

competition, eliminate or oppress or discriminate against small enterprises. The President is given power to cancel or modify any provision of a code. The Emergency National Committee is empowered to submit amendments to the code. The appropriate steps to be taken by each division for the submission of a division code are set forth in detail.

While the National Industrial Recovery Bill was being debated in Congress, many industries, anticipating the passage of the bill, called their members together and discussed the formulation of their codes. The "Model Code for Self-Governing Industries" was used as a guide in this early code formulation, as is apparent in the first twenty or thirty codes approved by the President and many of the other early drafts of codes submitted for approval.

CHAPTER I

REASONS FOR PROMULGATION OF MODEL CODE, NOV. 6, 1933.

I. PROPOSED CODES WERE RAPIDLY BEING FILED WHICH WERE DIFFERENT IN APPROACH, TREATMENT, AND EXPRESSION.

The National Industrial Recovery Act as passed by Congress and signed by the President on June 16, 1933, differed basically from the proposals which gave impulse to the Act. The President, immediately after signing the Act, issued a statement in which he commented on the Act and briefly explained the procedure to be used by associations in filing codes and the machinery to be used by NRA in approving codes. This Bulletin stated in part as follows:

> "The law I have just signed was passed to put people back to work -- to let them buy more of the products of farms and factories and start out business at a living rate again. This task is in two stages -- first, to get hundreds of thousands of the unemployed back on the payroll by snow-fall and second, to plan for a better future for the long pull."
>
> * * * * * *
>
> "As to the machinery -- the practical way of accomplishing what we are setting out to do, when a trade association has a code ready to submit and the association has qualified as truly representative, and after reasonable notice has been issued to all concerned, a public hearing will be held by the Administrator or a deputy. A Labor Advisory Board appointed by the Secretary of Labor will be responsible that every affected labor group, whether organized or unorganized, is fully and adequately represented in an advisory capacity and any interested labor group will be entitled to be heard through representatives of its own choosing. An Industrial Advisory Board appointed by the Secretary of Commerce will be responsible that every affected industrial group is fully and adequately represented in an advisory capacity and any industrial group will be entitled to be heard through representatives of its own choosing. A Consumers' Advisory Board will be responsible that the interest of the consuming public will be represented and every reasonable opportunity will be given to any group or class who may be affected directly or indirectly to present their views."
>
> * * * * * *
>
> "At the conclusion of these hearings and after the most careful scrutiny by a competent economic staff the Administrator will present the subject to me for my action under the law."
>
> * * * * * *

"Under Title I of this Act, I have appointed Hugh Johnson as Administrator and a Special Industrial Recovery Board under the chairmanship of the Secretary of Commerce. This organization is now prepared to receive proposed codes and conduct prompt hearings looking toward their submission to me for approval. While acceptable proposals of no trade group will be delayed, it is my hope that the 10 major industries which control the bulk of industrial employment can submit their simple basic codes at once and that the country can look forward to the month of July as the beginning of our great national movement back to work."

On the same day the Act was signed the Trade Association Section of the Bureau of Foreign and Domestic Commerce issued a bulletin outlining the provisions of Title I of the Act, as an aid to industry in drafting proposed codes.

June 19, 1933, the Special Industrial Recovery Board, appointed by the President by Executive Order No. 6173, held its organization meeting at the Department of Commerce. General Johnson, now the NRA Administrator, presented to the Board a detailed statement of action already taken toward setting up an organization for the administration of the statute, and various questions of policy in connection with the form of the organization and the steps to be taken under the Act were considered. The Board approved the issuance as NRA Bulletin No. 1 of the President's statement of June 16, 1933, and also issuance as Bulletin No. 2 of a guide to industry for preparing and securing codes of fair competition.

It was the consensus of the Board that the procedure adopted should place the initiative upon industry, and that the functions of the Government should be primarily directed toward stimulating cooperation in increasing purchasing power by putting additional labor back to work while at the same time protecting the consumer against premature price increases.

The purpose of Bulletin No. 2 was to inform all trade associations and industrial and labor groups how to proceed to secure the benefits of the Act. Relative to the content of the codes the following was stated:

"It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself . . . . . "

Upon the issuance of Bulletin No. 2, NRA Press Release No. 4 was given out, reading as follows:

"Basic principles which will guide the National Recovery Administration in consideration of "codes of fair competition" were announced today by Administrator Hugh S. Johnson in official Bulletin No. 2.

"The Bulletin emphasizes the fact that the initiative in the recovery program rests upon industry itself and that 'it is not the function of the National Recovery Administration to prescribe what shall be in codes------ or to compel the organization of either industry or labor.'

"'Basic Codes' the bulletin continues, 'containing provisions respecting maximum hours of labor, minimum rates of pay and conditions of employment, which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining.'

"Again emphasizing the purpose of the Act to encourage 'a voluntary submission of codes,' the bulletin points out the penalty provisions of the law applicable to industries which fail to comply voluntarily.

"The bulletin invites the immediate submission of simple Basic Codes by the ten largest industries, as suggested by the President when he signed the Act, the codes to cover 'only such agreements' as meet at once the three objectives of the Act, namely, 'Maximum hours of labor, minimum rates of wages, and such means as each industry may find necessary to protect its constructive and cooperating majority from the wasteful and unfair competition of minorities or recalcitrants.'

"The basic codes, it is suggested, should propose an 'average work week----designed so far as possible to provide for such a spread of employment as will provide work for employees normally attached to the particular industry.'

"Likewise codes should propose a minimum wage scale 'sufficient in fact to provide a decent standard of living in the locality where the workers reside.'

"Broad protection for the interest of the public as consumers is assured by specific provisions for representation at all hearings, to the end that the effect of increased money wages shall not be offset by too rapidly mounting prices."

A proposed Cotton Textile Code was submitted to the National Recovery Administration by the Cotton Textile Institute the day the President signed the Act. The first code submitted. It was formulated during the Congressional debate on the Recovery Act by conferences among representatives of the industry with the assistance of General Johnson and his aides.

A large majority of industries and trade groups desired to cooperate with the President in the recovery movement, and were preparing codes to be submitted under the provisions of Section 3(a) of the Act. The result was that NRA was soon flooded with codes of all types imaginable.

Listed below are some of the prominent codes filed during June and July, 1933:

(1)	Cotton Textile	June 16
(2)	Cast Iron Soil Pipe	June 22
(3)	Lumber	July 11
(4)	Shipbuilding and Shiprepairing	" 12
(5)	Petroleum	" 13
(6)	Coat and Suit	" 13
(7)	Iron and Steel	" 14
(8)	Wool Manufacturers	" 15
(9)	Rayon Weaving	" 16
(10)	Rayon and Synthetic Yarn	" 19
(11)	Electrical Manufacturing	" 19
(12)	Clothing Manufacturing	" 19
(13)	Lace Manufacturing	" 21
(14)	Millinery	" 22
(15)	Cotton Garment	" 25
(16)	Wall Paper	" 27
(17)	Photographic	" 27
(18)	Corset and Brassiere	" 27
(19)	Full Length Dramatic and Musical Theatrical Industry	" 27
(20)	Dress Industry	" 28
(21)	Automobile Industry	" 29
(22)	Retail Dry Goods	" 31
(23)	Food and Grocery Dist. Trades	" 31
(24)	Lime Industry	" 31

As of July 10, 1933, one hundred and six national and local codes had been received. By August 8, three hundred and ninety-nine codes classified as having a national status had been submitted.

From June 16 to September 5, 1933, eight hundred and thirty-three national codes were filed. The breakdown as to periods of filing are as follows:

Period	Number
June 16 - July 15	65
July 15 - July 31	144
August 1 - August 15	262
August 16 - August 31	284
September 1 - September 5	78

From September 5 to September 23, 1933, inclusive, the classification of the codes received is as follows:

	Classification			
Period	National	AAA	Non-National	Total
September 5 - 9 inclusive	95	9	234	338
" 11 - 16 "	61	0	368	429
" 18 - 23 "	29	12	239	280

At the close of business September 23, 1933, the total number of codes received subsequent to June 16, was as follows:

National	981
Non-National	2684
Total	3665

From June 16, 1933, to January 2, 1934, the total number of codes received was:

National	928
Local	2552
Supplemental	263
AAA	553
Total	4296

II. UNIFORMITY WAS DESIRABLE

Bulletin No. 2 stated: "It is not the function of the National Recovery Administration to prescribe what shall be in codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself." This statement apparently misled some associations into believing that it would be possible to secure approval of trade practice provisions advantageous to their particular industries only; evidently they were forgetful that one of the main reasons for the act was to decrease unemployment and increase purchasing power. Uniformity of provisions was desirable, because public understanding would depend in substantial degree upon the adoption of simple rules and provisions in codes. Furthermore, if a large number of industries were under similar provisions, the question of compliance would present fewer problems.

Up to the first of August, 1933, with the aid of the "Model Code for Self-Governing Industries," previously described, NRA Bulletin No. 2, the "Basic Code for Substitutions before the Policy Board in PRA", (See Exhibit 2), (*) and the provisions of approved codes, industries were drafting codes of many types and forms.

III. EXPEDITION WAS NEEDED.

As implied in the President's message when he signed the National Industrial Recovery Act, the codes submitted by the ten major industries would be given first consideration by the NRA. The immediate task was to put codes through the mill, and to get people back to work.

Bulletin No. 2, also stated: "It is the purpose of the Act to encourage a voluntary submission of codes of fair competition and the procedure offered by those provisions (Bulletin No. 2) for basic codes is intended to simplify and expedite this process."

(*) See "The President's Reemployment Agreement"
A Division of Review Report.

It was the Administration's desire to have codes submitted, approved, and set in operation as soon as possible, because time was of the essence if unemployment was to be relieved before winter set in.

Nevertheless, the negotiations and approval of the Cotton Textile Code required about three weeks and first it seemed that the code mill was grinding slowly, for only eight codes (Cotton Textile, Shipbuilding and Shiprepairing, Wool Textile, Electrical Manufacturing, Coat and Suit, Lace Manufacturing, Corset and Brassiere, and Ligitimate Full Length Dramatic and Musical Theatrical) were approved by August 16, two months after approval of the Recovery Act.

However, during the ensuing two months 49 codes were approved and by Mid-October there was increasing realization in NRA of the need of stock taking with respect to the provisions already approved and daily receiving approval.

IV. NRA POLICY HAD NOT BEEN DEVELOPED.

At the time of the establishment of the Code Analysis Division in NRA, about July 15, 1933, no general policies, regarding the provisions to be included in codes, had been announced by the Administrator. This Division adopted its own standards for checking proposed codes, and these standards were established upon the Act which provided that specific (obligatory) provisions be included in every code approved by the President, NRA Bulletin No. 2, and the precedent established by the codes approved up to that time. It was upon these standards that the codes were checked and analyzed. In the analysis of a code the attention of the Deputy Administrator in charge of the code was called especially to any price-fixing and production control devices which in the opinion of the Division were economically undesirable. These analyses were purely advisory and were furnished to the Deputy Administrator in charge of the specific code; the Industrial, Labor, and Consumers' Advisory Boards; the Legal Division; and the Research and Planning Division.

In October, 1933, the Code Analysis Division was abolished; therefore the responsibility of passing on the representative character of the applicant group was placed upon the Deputy and his legal adviser. The code checking process was transferred to the Deputy, his advisers, and the Code Assistants of the newly created divisions, on October 25, 1933.

V. INDUSTRY WOULD BE AIDED IN FORMULATING CODES FOR PRESENTATION.

After a few weeks of hearings on the codes first submitted, it became obvious that many of the provisions proposed by industry would be rejected by NRA, yet during the early months of code making, NRA had not issued any guide for code drafting that could be used by Industry. A result was prolonged negotiations and delays in the approval of codes. During the months of July through October, industry used as one guide in code drafting the first twenty or thirty approved codes. The officials of NRA realized that in order to obtain uniformity and to expedite the process of code making industry should have an an official guide.

NRA Press Release No 7, of June 22, 1933, carried a story of a meeting of Dudley Cates, Assistant Administrator, NRA, with representatives of the United Typothetae of America. The following are excerpts from the release:

> "Mr. Cates at the outset clarified two misconceptions which many business men have carried to Washington with them when they have come to discuss codes for their industries. The government, he declared, had no intention of telling industry what it must do - the initiative must proceed from within industry itself."

* * * * *

> "Nor does the Administration contemplate price-fixing as part of its function. Price agreements proposed by separate industries are subject to approval, Mr. Cates explained, if they are not monopolistic in intention or effect or otherwise opposed to the public interest."

Industries, basing their hopes on such statements as were made by the Assistant Administrator, flooded NRA with many novel devices for price fixing and other fantastic provisions. The codes were generally lacking in uniformity.

The Administrator, in a radio address of August 23, 1933, opened his speech with the following:

> "The first month of effort under the President's Reemployment Program is drawing to a close. A principal purpose was to speed up the submission of codes. We are happy to report to you that it has had effect and that, with a very few exceptions, practically the whole of American industry and commerce have submitted codes for public hearings. In addition to these codes over one and one-half million individual agreements have been signed. New signatures are coming in at the rate of one million a month and the intensive effort in the various communities does not begin until next week."

As stated by the Administrator, Industry had submitted codes covering about every type of business in the United States. However, these codes had been formulated without the aid of a "Model Code" from NRA.

CHAPTER II
FORMULATION OF MODEL CODE

From the time of the establishment of the NRA, various officials had seen the necessity for the uniformity of code provisions, and a few attempts had been made to formulate a Model Code. Mr. William P. Farnsworth of the Legal Division took the initiative in the formulation of the first Model Code to be used by any part of the NRA, drafted a "Model Code" (See Exhibit "3"), which on August 7, 1933, was distributed to the members of the Legal Division for their comments. Copies were distributed subsequently to the heads of the Industrial, Labor and Consumers Advisory Boards, and of the Research and Planning Division. The comments received in reply to this memorandum were duly considered, and a "Rough Draft #4 of Model Code (See Exhibit "4") was issued about August 10th. This draft was used only within the Legal Division. It set forth the purpose of the Act; definitions; general labor provisions, including Section 7(a) of the Act, prohibition of child and penal labor, maximum hours and minimum wages; provided for the administration of the code, the establishment of an industrial relations committee, and modification of the code. Objections were raised by Mr. Richberg to this draft, and the issuance of this Model Code was held up.

While the formulation of a model code was an NRA problem, historically it must be noted that in April, 1932, more than a year before the passage of the National Industrial Recovery Act, the Bureau of Foreign and Domestic Commerce of the Department of Commerce, desiring to aid the trade associations, which were fast losing membership and dues because of the business depression, issued an "Ideal Charter for Trade Associations" (Exhibit 7). The purpose of this charter which was in a way a forerunner of the NRA Model Code, to call the attention of trade associations to the scope of co-operatives which they could carry on. Many groups at that time were "in a fog" as to what they could do within their legal rights without incurring the penalties of the anti-trust laws. Frederick M. Feiker, Director of the Bureau of Foreign and Domestic Commerce, presented this charter at the April 5, 1932, session of the Annual Award Meeting of the American Trade Association Executives, held in New York City.

The chief authors of this "Ideal Charter" were C. J. Junkin, of the Law Division of the Department of Commerce, and C. Judkins, head of the Trade Association Section, Bureau of Foreign and Domestic Commerce.

The "Ideal Charter" was revised by Mr. Judkins, and on May 26, 1933, the revised form known as the "Model Charter" was introduced before Congress by Congressman Celler of New York, member of the Judiciary Committee of the House of Representatives. It was apparently Mr. Celler's belief that the Government should aid business in establishing some form of partnership agreement to permit greater business stability under the anti-trust laws.

Mr. Celler's address to the House of Representatives and the Act introduced by him, are to be found on pages 4399 to 4403 of the Congressional Record of May 26, 1933.

The Model Charter as referred to above was used by the Code Standardization Group, hereinafter discussed, in formulating the provisions of the Model Code.

In late July, 1933, a committee, known as the NRA-Commerce Committee on an American Basic-Code of Fair-Practices, composed of John Guernsey, Chairman; C. Judkins, Secretary; Blackwell Smith; T. McFadden, and H. Heyden, had started a survey of the many hundred Codes filed by that time with the NRA, the resolutions voluntarily adopted by industry through its various trade associations, the rules approved by the Federal Trade Commission at trade practice conferences of approximately 150 industries extending over a period of 15 years and agreements of accuracy and fair practices in advertising and selling developed by better business bureaus and American newspapera. The Committee in its report of September 28, 1933, to the Legal Division of NRA (See Exhibit 6) recommended the adoption by NRA of 16 basic rules to be used by all industries in codes of fair competition. The subjects covered by the 16 basic rules were as follows: (1) inaccurate advertising; (2) bait advertising; (3) inaccurate labelling; (4) inaccurate references to competitors; (5) claims of "We undersell everyone"; (6) selling below cost; (7) threats of law suits; (8) secret rebates; (9) free goods; (10) selling on consignment; (11) bribing employees; (12) false billing; (13) interference with another's contracts; (14) repudiating one's own contracts; (15) "tying" and block booking contracts; (16) "black lists."

The Committee was of the opinion that the above basic principles were sufficient to cover practically any case of unfair practice in industry or trade.

In drafting the 16 basic principles, the Committee found that while unfair trade practices could be covered by these principles, there had been more than a thousand ways of stating them.

Relative to enforcement of the unfair trade practice provisions in codes, the Committee in its report made the following comment:

> "Unfair practice provisions in any Code of fair competition for an industry will have little value unless they are feasible for practical enforcement. No industry is completely isolated. It has some relationship with other industries either through a 'vertical' association as one of the steps between production and consumption or through a 'horizontal' arrangement of industrial contact.
>
> "The whole code structure is so directly balanced on the theory of 'BUSINESS GOVERNING ITSELF' and prompt protection by enforcement that unless the means of enforcement are clearly understood and easily demonstrated it will be practically impossible to obtain any material degree of compliance. The uniformity of provision and procedure in enforcement will eliminate that difficulty entirely."

The "Model Code" of November 6, 1933, included twelve of the sixteen fair practice provisions which were recommended by the NRA-Commerce Committee on the American Basic-Code of Fair-Practices.

Early in September, 1933, as a result of an effort to improve the effectiveness of the NRA Research and Planning Division, a committee was named to study the problem of the standardization of code provisions. The membership of this committee, known as the Code Standardization Group, was partly from outside NRA and was as follows:

Alderson	Department of Commerce
Barkin	Labor Advisory Board
Compton	Industrial Advisory Board
Coles	Public Relations Division
Copeland	Central Statistical Board
Cocoran	AAA
Cover	Central Statistical Board
Culberson	Industrial Advisory Board
Creditor	Executive Office
Edwards	Consumers' Advisory Board
Engle	Department of Commerce
Gates	Labor Advisory Board
George	Department of Commerce
Glasgow	Deputy Administrator, NRA
Guernsey	Trade Associations
Haake	Trade Associations
Halstead	Office of Deputy Administrator King
Hammond	Trade Association Division
Heyinger	Industrial Advisory Board
Heydon	Better Business Bureaus
Horton	Federal Trade Commission
Hunt	Consumers' Advisory Board
Jeffrey	Executive Office
Judkins	Department of Commerce
Junkin	Department of Commerce
Ludlum	Office of Deputy Administrator Whiteside
Massel	Consumers' Advisory Board
Meyer	Research and Planning Division
McFadden	Trade Associations
Rice	U. S. Census Bureau
Shannon	Legal Division
Shields	Office of Deputy Administrator Davis
Smith,L.M.C.	Legal Division
Stone	Research and Planning Division
Thompson	Central Statistical Board
Ward	Office Deputy Administrator Simpson
Wilmotte	Labor Advisory Board
Worthy	Office of Deputy Administrator Howard
Young	Office of General Hammond

This group was asked to formulate the provisions of a "Model Code" which could be released by the Administrator, and which would contain the results of the experience gained by the unofficial copies of model codes previously circulated among the personnel of NRA, other governmental agencies, and outside organizations.

It is noted that the Department of Commerce, Federal Trade Commission, Central Statistical Board, Agricultural Adjustment Administration and Census Bureau, as well as trade associations and better business bureaus, were represented in the Code Standardization Group. Some of the members were among those who aided in drafting the "Model Code for Self-Governing Industries" issued by the National Association of Manufacturers, May 31, 1933.

Those of the group from the Bureau of Foreign and Domestic Commerce of the Department of Commerce, the Federal Trade Commission and the trade associations were familiar with the codes of ethics of various industries. Many of the provisions of the codes of ethics were examined and some were included as fair trade practice provisions of the "Model Code". The practices condemned in the Federal Trade Commission's orders to cease and desist were also duly considered (See Exhibit 5).

On October 17th the Associate Counsel directed to the Executive Officer the following memorandum:

"From: Blackwell Smith
"To: Alvin Brown
"Subject: Policy Questions

"1. In general, do we wish to assume the administrative burden of extreme provisions in any more codes or have we enough experiments underway with the 300 or so codes now about complete.

"2. Fair Trade Practice Provisions:

"Whether to encourage, permit or discourage inclusion in codes of trade practice provisions which cannot clearly be established in the record as necessary for protection to the industry.

"(Perhaps policy of requiring report of Code Authority on desirability thereof.)

"3. Price Control:

"Whether to encourage, permit or discourage:

"(a) any actual price fixing:

"(b) protection of sellers stipulated resale price.

"(c) provisions protecting 'cost' plus reasonable return on investment.

"(d) provisions protecting seller's 'cost', including all items included in that term by good accounting practice.

"(e) provisions protecting production or direct cost.

"(f) prohibition of sales below lowest cost or lowest reasonable cost for the industry or subdivision. (with or without aid of an impartial agency in determining the same).

"(g) open price systems (with or without periods of notice before changes of published prices are permitted and with or without distribution of the actual price lists to competitors).

"(h) provisions empowering code authorities to adjust published prices or suspend operations of published prices.

"(i) handling of price control for service industries, and how.

"4. Limitations on production:

"(a) new productive equipment

"(b) limits on use of existing

"(c) allocation of production

"5. Investigation:

"(a) Whether to encourage, permit or discourage provisions giving code authorities or trade associations full, moderate or minimum powers of investigation (either directly or by means of 'impartial agents') with reference to members of the particular industry or

"(b) Whether to limit code authorities' and trade associations' investigatorial powers and provide for reference to N.R.A. of matters requiring investigation.

"6. Enforcement:

(same questions as under No. 5 above)

"7. Expenses of Administration:

"Whether to permit apportionment of expenses of code administration or non-assenting members of industry (making payments of share of expenses a condition of right to use of code insignia of participation in code authority activities, or otherwise).

"8. Sworn Statements:

"Whether to permit code authorities to require sworn statements from industry.

"9. Labels:

"Whether to permit provisions

"(a) requiring labels from all who comply

"(b) permitting code authorities to control issuance of labels.

"10. Compilation of Statistics:

"Whether to encourage, permit or discourage code authorities to compile and distribute statistics, or whether to require that reports from industry be transmitted to Washington directly or through the Code Authority, with or without rights of trade Associations to make use of the same for compilation and distribution to members.

"11. Reporting Periods:

"Whether to require reports for periods constituting multiples of weeks.

"12. Accounting Systems:

"Whether to permit codes to require new cost accounting systems or whether to tie down accounting to Internal Revenue methods.

"13. Handling of coops:

"Whether to require insertion of clauses in each code - whether to encourage a single code or whether to provide by Executive Order that genuine cooperatives are exempted from rebate provisions.

"14. Physically or Mentally Disabled:

"(a) How best to handle competition of products of charitable institutions, etc. (Permit sale at not more than_____% below?).

"(b) The question of the aged, cripples, etc. receiving less pay in codes. (except them from minimum wage provisions?).

"15. Export Business:

"How to treat in Codes; (set standards and except export business specifically from the inappropriate provisions?).

"16. Import Business:

"17. Prison Goods:

"How to handle competition of prison goods - probably in a compact between President and States; (forbid sale below competitive prices in private commerce?).

"18. Local Situations:

"Whether to permit local codes or agreements -

"19. Labor Agreements:

"Where to draw line as to and how to handle labor agreements submitted for approval of President under S.7 (b).

"20. Trade Ass'n. Functions:

"What to provide to cover part of trade ass'ns. in code administration.

"21. Control of Distrib's. by Producers:

"Whether to permit boycott for failure to maintain fair practices of producers code, resale prices, etc.

"22. Inequitable Restrictions:

"Whether to permit requirements of majority vote of Boards or of Assoc. members for admission of new members.

"23. Unions:

"Writing union contracts into codes (especially preferential).

"24. Code Authority:

"General scope of authority.

"25. Appointment of Code Authorities:

"Appointment of rep's. on Code Authorities - (without vote, to rep. to rep. Admin. or such other groups as he may designate?).

"26. Use of Trade Assoc. Board or Ex. Committee as Code Authority:

"27. Protection of minority in selection of Code Authority:

"Whether to require, and if so how, that minority have a right to appoint one or more representatives.

"28. Control of Employees:

"By indirection when practices against employers interests.

"29. Exceptions, exemptions, etc.:

"What to do about legitimate requests coming up more than 10 days after code goes into effect.

"30. Forward Contracts:

"(a) Whether to provide in codes for relief of seller as per PRA.

"(b) Policy in excepting from that provision of PRA.

"31. Price Increases:

"Whether to require provisions against same in codes.

"32. Changes in by-laws of Trade Associations after approval:

"Whether to require submission for approval etc.

"33. Differentials above minimum wages:

"How best to provide for maintenance of same and whether absolutely to require such provision in each code.

"34. Arbitration Clauses:

"Whether to insert American Arbitrary Association Clauses; what to do about facilities, rules and regulations.

"35. Powers under sec. 3(e):

"Whether to treat as supplementary for codes or inclusive of all power of relief as to imports.

"36. Right to give Premiums:

"Whether to protect the concerns doing this business and where to draw the line.

"37. Percentage of Industry equal to true rep:

"38. Contents of Blanket Executive Order:

"(a) Making reports to government confidential

"(b) Requiring all persons having knowledge to give it when requested, in reports, in any investigation (subpoena).

"(c) Access of books and other sources (subpoena).

"(d) Investigations by NRA.

"39. Amendments of Codes:

"Notice, formalities, assent.

"40. Handling of codification of Industries:

"In outlying possessions.

"41. Handling of Salesmen in Codes:

"42. Adoption and Use of Code Insignia:

"43. Handling of Professions:

"Encouragement of agreements with the President (?).

"44. The North-South Differential:

"45. Protection to the Negro:"

To further develop the Administration's position on the questions raised in the foregoing memorandum, an informal committee consisting of representatives of the three advisory boards and of the Research and Planning Division and the Associate Counsel, met a day or two subsequently at the suggestion of the latter, and on October 20th made the following recommendations, among others, to the Administrator:

"I. Procedural Recommendations:

"1. Small Industries

"A survey should be made and all efforts centered temporarily on codes affecting more than, say 15,000 employees. To prevent loss of time during postponement of any code, industry should be given Model Code and schedules of information to complete. When reached, their codes should go through quickly if they use the time on these. Small industries caught in peak seasons by PRA should be given exceptions rather than taking time for codes to meet their problems.

"2. Model Code.

"The model outline for codes should be further polished, given general approval (subject to NRA complete freedom in its application to specific codes) and made freely available. (*)

"II. Recommendations for Uniformity on Substance of Codes.

"1. Model Code Contents

"Each clause in the model code would be clearly marked as

(*) The "model outline for codes" referred to (Exhibit 9) was dated October 1, 1933. See also Chapter III of this report.

'Generally Applicable' or 'Merely Suggestive' and the 'Generally Applicable' class should be expected from all industries unless good cause is shown as to their inappropriateness.

"2. Price Provisions.

"More time is spent on price provisions than any other single variety.

"(A) Until final decision of the President's Price Committee, it is recommended that we oppose:

"(a) Any real direct or indirect fixing of sales prices as opposed to minimum prices, except perhaps in wasting natural resource industries;

"(b) Any provisions forbidding reduction by distributors of the producers stated resale price;

"(c) Any provisions forbidding sale below 'cost' when the term is undefined, or includes any inflationary items such as depreciation, return on capital, etc.

"(d) Any provisions forbidding sale below the particular seller's own cost, no matter how defined, because

"(i) separate determination of cost of each party complained of means hopeless morass administratively and

"(ii) seller should be permitted to meet price of a competitor if latter not selling below his own cost.

"(B) It is recommended we raise no objection to:

"(a) Provisions prohibiting sale below properly defined costs for lowest ____% of the Industry as determined and published by any approved impartial agency.

"NOTE: The findings could be made on a reasonable but arbitrary engineering and accounting basis, would avoid difficulty of actual determination of any one concern's costs (impossible with precision) and when published could be directly compared with actual prices of members of industry; would be entirely self-policing if published minimum were freely available.

"(b) Provisions for true open price systems, meaning

"(i) published prices of effective within not more than 10 days in complex industries or 5 days in simple

"(ii) not to be incapable of withdrawal for any period of time

"(iii) Not to be subject to veto or modification by any agency and

"(iv) To be generally published for benefit of buyers as well as sellers.

"3. Code Authorities.

"Standardization on this point would save much time. It is recommended that:

"(a) The Code Authority may be the Board or Executive Committee of a Trade Association or a combination of several, where more than one association, but

"(b) Where trade associations do not cover practically entire industry, at least two regular members of Code Authority should be selected by non-association members voting by themselves without participation by association members.

"(c) The Administrator should be given the right (to be uniformly exercised in the major industries but perhapd only in special cases among small industries) to appoint not more than three non-voting members.

"(d) Power of Code Authority to be normally limited to

"(i) administrative matters without discretion in matters affecting rights and property of members of industry.

"(ii) collection of reports of all concerns and passing same on to Washington and to legitimate trade associations.

"NOTE: In view of desire to strengthen trade associations important functions such as compilation and analysis of reports from industry for benefit of members of the industry, can well be left out of Code Authority and be made peculiar privilege of Trade Associations in serving their members.

"(iii) distributing information, interpretations, etc. to industry.

"(iv) collecting and properly referring or administratively caring for complaints.

"(v) making recommendations to the administrator.

"(e) Powers of Code Authority should not include

"(i) any judicial functions (except as it can provide facilities for impartial arbitration).

"(ii) any power to investigate into books and private affairs of members of industry except through approved impartial agent.

"4. Expenses of Code Administration.

"Since no one had shown a strong ground for believing we can assess expenses of code administration on all, including non-assenters, it is recommended:

"(a) that expenses of Code Authority be kept down, as per above limitations, leaning on trade associations.

"(b) that a Code Insignia, including the Blue Eagle be devised at once, and made available only to those who express assent.

"(c) that only assenters be permitted to participate in selection of members and in the activities of the Code Authority.

"(d) That if this problem seems serious in January we put it up to Congress, along with other matters then requiring attention.

"5. Union Agreements in Codes.

"It is recommended:

"(a) That no union agreements, existing or prospective, involving separate concerns, be written into codes.

"(b) That no union agreement be permitted to be made by the code a standard for all, including nonparties thereto, in a locality, until submission to and approval by NRA.

"(c) That no union agreement be made by a code the standard for all in any locality, without consent of a very substantial majority (at least 65%) of the industry involved.

"6. Statistics

"(a) In view of the practically uniform objection of industry to Office Order No. 34, it is suggested that a new clause be prepared to cover the entire matter of furnishing reports by members of industry, whether through Code Authorities or directly to the Administrator, so that the requirement of the clause in Office Order No. 34 shall not have the appearance of a purely additional requirement. It may be provided that the Administrator may de-

termine whether such reports are to be furnished directly or through the Code Authority, and to what government agencies they shall be sent.

"(b) In order to reassure industry as to the protection of information sent through to Washington, and in order to add dignity to the whole matter of furnishing reports, it is recommended that rules and regulations on this matter be prescribed along the lines suggested by the Central Statistical Board and Secretary Perkins at an earlier date. A rough draft of such an executive order is available.

"7. Labels:

"(a) It is recommended that provisions may properly permit the use of an N.R.A. label by those complying with the Code, and may forbid such use by those who do not comply with the Code, but that we not permit provisions compelling the use of N.R.A. labels.

"(b) Code Authorities may control the issuance of labels, but should not have final discretion to determine that any members of industry are not entitled to the use of labels.

"8. Limitations on Production:

"This sort of provision is an example of the special provisions which should not be permitted unless a clear showing can be made on the record that the needs of the industry really demand the same, as such limitation can only be permitted if the Administration assumes heavy responsibility to observe the operation, and a very large percentage of codes already in final stages places such responsibility on the Administration. The same comment applied to provisions limiting new productive equipment and allocating production.

"9. Control of Distributors by Producers:

"The comments made in the last paragraph apply likewise to provisions whereby one branch of the industry seeks to control the practices of another branch of the industry. Such control is frequently requested and raises extreme difficulties of legislation of one group for another.

"10. Export Business:

"In general, any trade or industry involving export phases should be covered by the entire code, with the exception of specified provisions which can be shown to be inappropriate or undesirable for export business (including in this category, price and trade practice provisions, but never including labor provisions).

"11. Insular Possessions:

"This matter should be handled by covering in codes the entire United States, including all possessions, subsequently appointing deputy administrators for each possession, and holding hearings in each possession at which the special treatment required for the particular possession involved may be worked out for each affected industry, all as set forth in a full memorandum prepared under direction of Mr. Alvin Brown and the Legal Division.

"12. Prison Goods:

"This matter should be handled by a compact between the President and the States, which is now in preparation, and provisions in codes in the meantime, if any, should be made operative only until the effective date of such compact. Any provisions in codes should probably be aimed to forbid transactions in prison goods at prices lower than the lowest reasonable cost or price of the same in private commerce.

"13. Cooperative Organizations:

"This matter should be handled by an executive order as now prepared, providing that no provision of any code shall be construed to make illegal any patronage divident of a bona fide and legitimate cooperative organization, as to be defined on the basis of the facts developed at a hearing called by the executive order. No provision in codes should deal with this matter in the meantime.

"14. Accounting Systems:

"Provisions in codes referring to new cost accounting systems should provide for recommendations to the Administrator and the adoption of the accounting systems should never be made mandatory on every member of the industry, at least without an adequate period of adjustment.

"15. Forward Contracts:

"In view of the wide-spread abuse of provisions such as that in P.R.A. by members of industry adding arbitrary surcharges labelled 'NRA additional costs', or 'NRA taxes', etc., with the general result of excessive raising of prices, it is recommended:

"(a) That no further provisions of this sort be inserted in codes, and

"(b) That there be a policy of free exception from that provision of P.R.A. by any member of industry who is caught with requests for an adjustment that he cannot pass on.

"16. Price Increases:

"A provision should be inserted in codes declaring policy against over-pricing, perhapd in the form used in the model code, with an

additional declaration such as the President's in favor of relying on future volume as a source of profit.

"17. Arbitration:

"Declaration, perhaps in form similar to the clause submitted to the American Arbitration Association, should be inserted in favor of arbitration as a method of determining disputed facts, as well as controversies between members of the industry, the main thing being the providing of facilities and rules and regulations by the Code Authority. Promotion of this activity can be taken on by the division for promotion for trade association and Code Authority organization.

"18. Premiums:

"No provision should forbid the use of premiums in a reasonable fashion. The following statement by the consumers is approved;

> "'Premiums are among the most effective form of advertising open to many small enterprises, and may furnish additional value to the consumer. Deception and misrepresentation about their quality, value, and terms of distribution should be prohibited as false advertising but provisions flatly prohibiting them should be opposed.'"

"19. Physically or mentally disabled:

"This matter can be properly handled in the following manner:

> "'A person whose earning capacity is limited because of physical or mental defect, age, or other infirmity, may be employed on light work at not less than (75%) of the minimum wage set by the Code: provided, however, that the total number of such employees in any one plant shall not exceed two percent (2%) of the total of such plant, if the employee of the employer for the employee obtains from the State Authority designated by the United States Department of Labor, a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Such Authority will be guided by the instructions of the United States Department of Labor in issuing certificates to such persons.'"

"20. Local Situations:

"No local codes should be permitted until further notice but in order to make minimum working conditions of any value it is important to encourage machinery in codes for the establishment of minimum requirements for regions, preferably on the basis of agreement between a majority of the members of the Industry and the employees involved.

"21. Wage Rates above the Minimum:

"A clause on this should be definitely inserted in each code and the following method of handling the matter seems as satisdactory as any yet devised:

"'All employees, except as herein otherwise provided, shall have their hourly rates existing on or about June 16, 1933, increased by an amount not less than _____per-cen cent.'"

"'FOR THE COMMITTEE OF FIVE ON SPEEDING UP CODE PREPARATION.

"'Blackwell Smith.
Associate Counsel.'"

Some of the recommendations made by the "Committee of Five from the five Advisory Divisions and Boards" were included in the Policy Memorandum of October 25, 1933 set forth below, and the "Model Code" of November 6, 1933, both subsequently referred to herein. Other of the recommendations were later issued as policy statements in the form of Office Orders or Office Memoranda.

The Special Industrial Recovery Board appointed by the President by Executive Order No. 6173, of June 16, 1933, approved the first policy announcement, Bulletin No. 2, issued by the N.R.A. From June 16, 1933, until September 16, 1933, there was no internal NRA board appointed to pass on policy. Office Order No. 35, September 16, 1933, made the following announcement:

"In anticipation of working out a change in our organization to accommodate the gradual merger of the Blue Eagle work into the work of code hearings and code administration, and to free the time of the Administrator by a greater delegation of responsibility and authority, a policy board is created consisting of

W. L. Allen
Alvin Brown
Thomas S. Hammond
Robert W. Lea 4
Edward F. McGrady
Charles Michelson
Malcolm Muir
Donald R. Richberg
Mrs. C. C. Rumsey
Alexander Sachs
K. M. Simpson
Nelson Slater
Robert K. Straus
Walter C. Teagle
A. D. Whiteside
C. C. Williams
Leo Wolman"

As a guide to the personnel of NRA, the first announcement of policy issued by the Policy Board was the "Policy Memorandum of October 25, 1933." The content of this memorandum was as follows:

"P O L I C Y M E M O R A N D U M

"(Confidential)

"At the meeting of the Policy Board on October 25 the following conclusions were reached:

"1. Order of Handling Codes. To the extent permitted by other consideration, effort should be devoted to those codes which affect the greatest number of employees.

"2. Special Provisions in Codes. So far as is practicable, provisions in codes designed to meet special situations should be excluded until a later date unless they are of great import. The code may provide for a report on their necessity sometime after the code is in effect.

"3. Price Provisions. No real direct or indirect fixing of sales prices (as opposed to minimum prices) will be accepted.

"No provision forbidding reduction by distributors of the producers' stated retail price will be accepted.

"In a price provision based on cost, cost should be defined to the extent of indicating its principal elements in a general way. Cost of production may include a reasonable allowance for depreciation, but not for return on capital.

"A limitation of price based on seller's cost should be subject to the exception that the seller be permitted to meet the price of a competitor whose price does not violate the code.

"Open price systems should be urged, provided that prices -

"(a) shall be effective within not more than ten days in complex industries or five days in simple.

"(b) shall be capable of withdrawal at the pleasure of the seller.

"(c) are not subject to veto or modification by any agency

"(d) are to be generally published for the benefit of buyers as well as sellers.

"4. Code Authorities. The Code Authority may be the Board or Executive Committee of a trade association or a combination of several, or may be elected by such trade association or associations, if properly representative of the industry.

"In general, rather than attempt to enumerate the powers of Code Authorities, it is preferable to provide that the duty of the Code Authority shall be to execute the provisions of

the code and the act, subject to disapproval by the Administrator of any of its acts.

"5. Expenses of Code Administration. If reasonable limits are prescribed, codes may provide for assessment on members to meet the expenses of the Code Authority.

"6. The Blue Eagle. A variation of the Blue Eagle will be devised for the use of assenters to codes. A serial number may be assigned to members for use in conjunction with the insignia.

"7. Participation in Code Administration. Only assenters shall be permitted to participate in the selection of members and in the activities of the Code Authority.

"8. Union Agreements and Schedules of Wages. No union agreements are to be written into codes nor are schedules of wages to be included in codes. The latter does not forbid two or three basing rates.

"9. Labels. Codes may properly permit the use of an NRA label by those complying with the code and may forbid such use by those who do not comply.

"10. Exports. It is proper to except exports from any provision regarding price or trade practices but never from labor provisions.

"11. Prison-made Goods. Codes may include a provision forbidding transactions in prison-made goods at prices lower than the lowest reasonable cost or price in private commerce.

"12. Accounting Systems. Provisions in codes, referring to new cost accounting systems should provide for recommendations to the Administrator and the adoption of the accounting should never be made manfatory, at least without adequate period for adjustment, and without allowing the utmost latitude consistent with obtaining information on a comparable basis.

"13. Forward Contracts. No further provisions respecting forward contracts should be inserted in the codes.

"14. Premiums. It will not be stated as a policy that industries may not forbid the use of premiums but provisions for premiums will be carefully scrutinized."

CHAPTER III

MODEL CODES ISSUED IN NRA

I. ISSUE OF AUGUST 8, 1933

This issue of a "Model Code" (Exhibit 4) was formulated by J. P. Farnsworth of the Legal Division. The General Counsel of NRA was of the opinion that Article VI, which provided for the establishment of an Industrial Relations Board, was "full of dynamite", and advised against the general distribution of this issue; therefore, it did not receive the approval of the Administrator and was used only within the Legal Division. (*)

II. ISSUE OF OCTOBER 1, 1933

This issue (Exhibit 9) was entitled "A Suggested Outline for Codes", and was prepared in the Legal Division. It was the intention that its use was to be temporary until an official "Model Code" was issued over the Administrator's signature. At the time of its issuance the Code Standardization Group was preparing recommendations on the provisions which were to be included in the "Model Code" issued November 6th. The Associate Counsel requested the Code Standardization Group to consider any objections raised to this draft in making their recommendations. This draft was to be used merely as a "stop-gap". The preface stated:

> "This form merely embodies suggestions for guidance in preliminary stages of endeavors to prepare codes, and none of the provisions contained therein are to be regarded as having received the approval of the National Recovery Administration or as being applicable to any particular trade/industry."

III. ISSUE OF OCTOBER 25, 1933

The Code Standardization Group, through its Chairman, submitted to the Associate Counsel of the Legal Division on October 25, 1933, a revised draft of a "Suggested Outline for Codes" (Exhibit 10) "for legal refinements and general consideration." Its distribution was limited to the personnel of NRA.

IV. ISSUE OF NOVEMBER 6, 1933

The Administrator, on November 6, 1933, approved the final draft of the "Model Code" (Exhibit 8) and many hundreds of copies were immediately distributed to NRA personnel, other governmental agencies, and industrial and labor groups. A full discussion of the provisions of the Model Code is contained in Chapter IV hereof.

The foreword of the Model Code stated:

> "The suggestions herein made are intended to assist trade and industry in the preparation of codes.

(*) This statement was made to the author by Mr. Farnsworth.

"Except as to those provisions which are required to be included in all codes by the National Industrial Recovery Act (which provisions are clearly indicated herein), none of the suggestions embodied in this draft are mandatory.

"It is believed, however, that the preparation of codes and their approval by the President will be greatly expedited if those who prepare codes conform as far as possible with the uniform phraseology here proposed."

NRA Press Release No. 1620 of November 8, 1933, contained the following account of this issue of the "Model Code":

"The National Recovery Administration today made public a Model Code of Fair Competition which, embracing in approximately 3,000 words the whole spirit and purpose of the NIRA, is applicable with minor variations to any industry: More than 7,500 copies of the Model Code are to be distributed to trade associations, organizations and units of industries now engaged in the preparation of codes for submission to the Administration.

"The inclusion of only one section of the so-called Standard Code -- the Collective Bargaining guaranty required by the Recovery Act -- is mandatory (*). The other sections, the result of several months intensive study of codes approved by the President, of pending codes and of rulings of the Federal Trade Commission during the last 15 years are recommended by the Administration to industries anxious to expedite the consideration and approval of their codes.

"Representatives of the country's leading manufacturing, retail and wholesale associations, the Federal Trade Commission, the Department of Commerce and the Better Business Bureaus collaborated with the legal division, the research and planning division and the industrial, labor and consumers' advisory boards of Administration in writing the Model Code designed to simplify the problems facing code-framers and facilitate the clearance of codes through NRA.

"Ninety-nine codes had been approved by the President as of today and 159 others, on which public hearings have been had, are being prepared for his approval, while another 50 are scheduled for hearing within the next two or three weeks. In these three groups are included all of the largest industries of the country. But, scores of preliminary codes have been filed or are being prepared by smaller industries and the Model Code is expected to be of material aid to them."

The issuance of the Model Code brought forth prompt comment from William Green, president of the American Federation of Labor and a member of the NRA Labor Advisory Board, who wrote to Leo Wolman, chair-

(*) The inclusion of Section 10(b) of the Act was also mandatory.

man of the Labor Advisory Board. The portion of his letter bearing on the Model Code follows:

"There was released as of November 6 over the signature of General Johnson a Suggested Outline for Codes which bears on the cover page a statement that it is intended to assist trade and industry in the preparation of codes; and that while none of the suggestions are mandatory, it is believed that the preparation of codes and their approval by the President will be greatly expedited if those who prepare codes confrom as far as possible with the uniform phraseology of the Suggested Outline.

"This document will, of course, profoundly influence both the organization and the phraseology used in the codes, that are presented. Accordingly, certain matters in the Suggested Outline for Codes are of deep interest to the Labor Advisory Board.

"1. The Code Authority. On this point the Suggested Outline for Codes says (page 8): 'In addition . . . there may be _____ members without vote, to be appointed by the President, to serve for a term of _____ months from the date of appointment.'

"This phraseology seems unfortunate both because it fails to designate the types of representation which should be provided for and because (probably unintentionally) it definitely provides that these members shall hold office for only a limited period.

"It is suggested that the following phraseology would be more appropriate: 'There shall be appointed by the President as members of the Code Authority three members without vote; one representing the Government, one representing the consumers, and one representing labor. The initial appointment of the representative of the consumers is to be on recommendation of the Consumers Advisory Board; the initial appointment of the representative of labor is to be on recommendation of the Labor Advisory Board. Due notice of all meetings of the Code Authority shall be given to the representatives without vote and they shall be afforded complete access at all times to all records, statistical material or other information furnished to the Code Authority in connection with or for the purposes of the administration of the code.'

"It is worth noticing that the iron and steel code contains the following statement with respect to such non-voting members: 'They shall be given full opportunity at such times as shall be reasonably convenient to discuss with the Board of Directors

or any committees thereof any matters relating to the administration of the Code and to attend meetings of the Board at which action on any such matters shall be undertaken and to make recommendations as to methods or measures of administering the Code. Due notice of all such meetings of the Board of Directors shall be given to such representatives of the Administration. The records of the Board of Directors relating in any way to the administration of the Code shall be open to such representatives at all reasonable times. They shall be afforded by the Board of Directors complete access at all times to all records, statistical material or other information furnished or readily available to the Board of Directors in connection with, or for the purpose of, the administration of the Code. The Board of Directors, acting directly or through one or more committees appointed by it, shall give due consideration to all requests, suggestions or recommendations made by such representatives of the Administration and render every possible assistance to such representatives in obtaining full information concerning the operation and administration of the Code, to the end that the President may be fully advised regarding such operation and administration through reports that may be made to him from time to time by such representatives, and to the end that the President may be assured that the Code and the administration thereof do not promote or permit monopolies or monopolistic practices, or eliminate or oppress small enterprises, or operate to discriminate against them and do provide adequate protection of consumers, competitors, employees and others concerned and that they are in furtherance of the public interest and operate to effectuate the purposes of Title I of the National Industrial Recovery Act.'

"2. A Joint Industrial Relations Board. The Suggested Outline for Codes makes no provision for such a board. In view of the importance of implementing all codes for the orderly and peaceful negotiations of all issues between industry and labor, it is suggested that some such provision as the following should be inserted: 'There shall be constituted by the Administrator a Joint Industrial Relations Board of the _____Trade/Industry, consisting of an equal number of representatives of employers and employees, and an impartial Chairman elected by the members of the Board, to serve as an adjustment agency with respect to hours, wages and general labor conditions; provided, however, that an existing adjustment agency may be utilized for this purpose if in the opinion of the Administrator an appropriate agency exists. The selection

of the representative or representatives of employees shall be by the Labor Advisory Board; the selection of the representative or representatives of employers shall be by the Code Authority. The Joint Industrial Relations Board may establish such subsidiary agencies as it finds necessary in its work.'

"3. Payment for Overtime. The Suggested Outline for Codes contains no provision with respect to payment for overtime. This omission places upon labor the entire burden of arguing not only for the principle but for the proper rate of pay. The Suggested Outline should contain in some form a provision that overtime shall be compensated at the rate of time-and-one-half.

"4. Miscellaneous Provisions. The foregoing deals with the more important defects of the Suggested Outline from the point of view of the Labor Advisory Board. It is to be said, however, that several of the labor clauses are susceptible of improvement. It would be desirable to have these improvements embodied in any new edition of the Suggested Outline, and in any event standard labor clauses for use in preparation of briefs, etc., might well be approved by the Labor Advisory Board.

"As a means of promoting the discussion of such standard clauses, there is appended a document entitled Standard Labor Clauses for Codes.

"As a means of summarizing the preceding discussion, the following issues are raised:

"1. Does Labor Advisory Board wish to recommend to General Johnson the inclusion, in a revised edition of the Suggested Outline for Codes, of clauses dealing with:

A. The Code Authority
B. A Joint Industrial Relations Board
C. Overtime

"And if so, what phraseology will the Labor Advisory Board approve?

"2. Does the Labor Advisory Board wish to recommend to General Johnson any changes in phraseology of the other labor clauses?"

Due to objections from various sources to specific provisions of the Model Code, an effort was made by the Administrator to recall it. Its use by the personnel of NRA was stopped for a time and thereafter it was circulated merely as an aid in code making and on an unofficial basis.

V. ISSUE OF APRIL 3, 1934.

This issue (Exhibit 11) was a revised edition of the Model Code of November 6, 1933, and was the result of criticisms of the earlier issue and the experiences that had been gained from code administration. Some minor changes were made in the definitions; the hour, wage and general labor provisions, and the trade practice rules. The recommendations of the Secretary of Labor in a letter of November 11, 1933 (*) pertaining to the collection of statistics by the Federal Government, Section 7 (c) of Article VI of the November 6th issue were followed.

Another change was the revision of the "Assessment" provision, Section 7 (f) of Article VI, which was amended to make it mandatory in form. A provision was added that an itemized budget of the expenses of the Code Authority should be submitted to the Administrator for his approval. This was to permit NRA to exercise more adequate control of Code Authority finances.

A major addition was a provision for the establishment of Industrial Relations Committees. On December 6, 1933, the following memorandum was issued to the Legal Division for future guidance:

"NATIONAL RECOVERY ADMINISTRATION

"December 6, 1933.

"MEMORANDUM

"To Legal Division

"From Blackwell Smith

"Subject Industrial Relations Boards

"Complaint has come from the Labor Advisory Board that members of the Legal Division are striking out from codes the following provisions which the Labor Board has approved setting up an Industrial Relations Board to handle labor complaints and problems:

"' There shall be established by the Administrator, a National Industrial Relations Board for the Industry consisting of an equal number of representatives of employers and employees to deal with all matters in the code relating to

(*) NRA Files. NRA Labor Advisory Board, Letter from Secretary of Labor to Chairman of the Labor Advisory Board.

labor. Where a majority agreement of the Board cannot be reached, the Board shall select an impartial chairman to render a decision. The creation and functioning of these Boards including the selection of representatives of employees shall be in accordance with Section 7 of the Act. If no truly representative labor organization exists, the employee members of such Board shall be chosen by the Labor Advisory Board of the N.R.A. The employer representatives shall be chosen by the Code Authority. The Industrial Relations Board may establish such subsidiary agencies constituted in like manner as it finds necessary.'

"So far as I can see there is nothing in this provision which we should object to as a matter of legal policy, although there is room for refinement in the form. It seems to me that it is purely a matter of administrative policy whether or not to include this or some similar provision, assuming that a workable method is included for the selection of the labor representatives. The method suggested in the quoted clause, i.e., nomination by the Labor Advisory Board seems at least workable where there is no truly representative labor organization, and if the latter exists selection by such an organization would be workable.

"Blackwell Smith
Associate Counsel"

Apparently the recommendations made by William Green, President of the American Federation of Labor, in his letter of November 10, 1933, previously referred to, had some bearing on the issuance of the above memorandum and the inclusion of such a provision in the Model Code of April 3, 1934.

VI. ISSUE OF OFFICE MANUAL, NOVEMBER 21, 1934.

Incorporated in Part II of the N.R.A. Office Manual was an "Outline for Code Making" which included changes and additions found desirable through experience. It also included the substantive requirements of Executive, Administrative and Office Orders and Office Memoranda issued subsequent to the Model Code of April 3, 1934.

PROPOSED MODEL PROVISIONS. FORMULATED BY THE CODE PLANNING COMMITTEE. (APRIL 17 - MAY 27, 1935)

The Executive Secretary of the National Industrial Recovery Board on April 5, 1935, called to the attention of the Board that under any extension of the Recovery Act only a short period of time might be

available in which all codes must be revised to conform to the new Act. (*)

The Board, on April 10, appointed a Co-ordinating Committee for the purpose of organization and control of the code revision program, composed of the Executive Secretary of the Board, the Code Administration Director, and the Control Officer with the Chairman of the Board as an ex-officio member. This committee drew on NRA personnel for sub-committees to study code reorganization, to draft a new model code, to suggest the policies regarding codes, and to study code consolidation. (**)

For the purpose of revision, the Model Code was divided into three parts --Administration, Labor and Fair Trade Practices. A sub-committee was appointed to revise each part. (***)

The "Recommended Trade Practice Provisions" (Exhibit 27) was submitted to the Code Administration Director on May 20th and the "General Labor Provisions" (Exhibit 28) on May 22nd. The "Administrative Provisions" were never submitted, being in the process of final revision when the Schechter decision was handed down.

The author desires to emphasize the fact that the provisions formulated by the sub-committee were never used in code drafting, and he has included them only as a matter of information.

(*) Memorandum to the Recovery Board, April 5, 1935-
NRA Files, Executive Secretary N.I.R.B.

(**) Minutes of Meeting of National Industrial Recovery Board,
April 10, 1935. -NRA Files

(***) Minutes of Code Planning Committee, April 19 and 22, 1935.
NRA Files, Code Planning Committee.

CHAPTER IV

PROVISIONS OF THE MODEL CODE

The "Suggested Outline for Codes", better known as the "Model Code", issued November 6, 1933 (Exhibit "13"), was the first outline used as a guide for code drafting to receive the approval of the Administrator. As heretofore pointed out, various individuals within the organization had made attempts to establish uniformity, and at the same time speed up the code making process. The "Model Code" clearly revealed the provisions which were deemed desirable to be incorporated in codes, and gave to the personnel of the NRA as well as to industry an official guide to be used in code drafting.

The Articles of this "Model Code" are set forth below as well as some of the reasons for the inclusion of the specific section of the Article.

ARTICLE I.

"Purposes

"To effect the policies of Title I of the National Industrial Recovery Act, this Code is submitted as a Code of Fair Competition for the _____Trade/Industry, and upon approval by the President, its provisions shall be the standards of fair competition for such trade/industry and shall be binding upon every member thereof."

This Article was predicated on the provisions of Section 3(b) of Title I of the Act. The inclusion of the substance in a code presented for approval was mandatory.

There were variations of the wording of this Article in the first 25 or 30 codes which were approved. Some of the provisions were brief, others were lengthy. For example the purpose clause of the Code of Fair Competition for the Cotton Textile Industry was as follows:

"To effectuate the policy of Title I of the National Industrial Recovery Act, during the period of the emergency, by reducing and relieving unemployment; improving the standards of labor; eliminating competitive practices destructive to the interests of the public, employees, and employers; relieving the disastrous effects of over-capacity, and otherwise rehabilitating the cotton textile industry; and by increasing the consumption of industrial and agricultural products by increasing purchasing power; and in other respects, the following provisions are established as a Code of Fair Competition for the cotton textile industry."

Many of the above phrases were taken from Section 1 (Declaration of policy) of Title I of the National Industrial Recovery Act. Later many of the above phrases were included in the "Findings" of the letter of transmittal of codes from the Administrator to the President for his approval.

The Code of Fair Competition for the Shipbuilding and Shiprepairing Industry, Approved Code No. 2, set forth the following as its purpose clause:

> "To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are established as the Code of Fair Competition for the Shipbuilding and Shiprepairing Industry."

The Codes approved for the national resource industries, before the issuance of a guide, went into detail in the purpose clause, especially to explain the necessity for the inclusion of a provision for control of production.

ARTICLE II.

"Definitions

> "The 'term' _____ Trade/Industry as used herein includes the _____(State accurately what is included in the trade/industry, whether manufacturing, building, transporting, repairing, selling, and/or distributing at wholesale or retail etc.) of_____ (Products, merchandise or service etc.), and such related branches or subdivisions as may from time to time be included under the provisions of this Code by the President of the United States, after such notice and hearing as he may prescribe.
>
> "The term 'member of the trade/industry' includes, but without limitation any individual, partnership, association, corporation or other form of enterprise engaged in the trade/industry either as an employer or on his or its own behalf.
>
> "The term 'employee' as used herein includes any and all persons engaged in the trade/industry, however, compensated, except a member of the trade/industry.
>
> "The term 'Act' and 'Administrator' as used herein mean respectively Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.
>
> "Population for the purpose of this Code shall be determined by reference to the latest Federal Census. (Insert only when needed)"

This Article, setting forth the definitions, was one of the most important of the Code. The definition of "industry" was to be clearly but concisely stated, so as to include specifically all fundamental functions of the industry, and was supposed to be so worded as to exclude all functions of any other industry, in order to avoid overlapping and misinterpretations.

Many codes included in the definition the term "manufacture and sale". "Sale was construed to mean sale by the manufacturer, or by any

instances was defined as follows:

"The term 'Member of the Code' includes any member of the industry who shall expressly signify assent to this Code."

The "Model Code" did not include the above definition because a member of the industry included under the defintion of a code was bound by the provisions of the code whether or not he assented to it.

The definition of the term "member of the trade/industry" was necessary in order to include under a code all members within the function of the definition of the "trade/industry."

The definition of the term "employee" was included to make more definite the application of the maximum hour, minimum wage and general labor provisions of a code.

Under the NIRA there were two Administrators appointed. One to administer Title I, the other to administer Title II. To avoid confusion and for brevity, it was desirable to define the term "Administrator" for Title I of the Act.

To avoid unnecessary repitition of the full title of the Act, it was advisable to define the term "Act".

ARTICLE III.

"Hours."

"MAXIMUM HOURS

"Section 1. No employee shall be permitted to work in excess of _____hours in any one week or _____hours in any twenty-four (24) hour period beginning at midnight, except as herein otherwise provided. A normal work day shall not exceed_____hours.

"(Maximum hours for special classes of employees, if any, should be inserted under the appropriate paragraph, together with the hours applicable.)"

Primary purposes of the NIRA were to put more people to work and increase purchasing power as soon as possible. NRA Bulletin No. 2 stated:

"(7) In preparing basic Codes, the following principles should be given consideration:

"(a) Basic Code provisions relating to maximum hours may involve appropriate consideration of the varying conditions and requirements of the several industries and the state of employment therein. An average work week should be designed so far as possible to provide for such a spread of employment as will work so far as practical for employees normally

attached to the particular industry.

"(b) Minimum wage scales should be sufficient to furnish compensation for the hours of work as limited sufficient in fact to provide a decent standard of living in the locality where the workers reside.

"(c) Conditions of employment should contain necessary safeguards for the health and safety of the workers and for stabilization of their employment."

Subsection 3 of Section 7(a) of the Act by implication gave the President power to approve maximum hours of labor, minimum rates of pay, and other conditions of employment. It was upon the authority of the Act that the principles set forth in Bulletin No. 2 were established.

The first objective which was to be aimed at was to limit the number of hours any employee could work to a point where it would be necessary to employ more persons to do the same amount of work.

Many codes contained provisions averaging the permissible hours of work over a period of several weeks or months. The desirability of such averaging was questioned by some N.R.A. officials, who took the position that no such arrangement should be allowed and that needs should be met by an exception to a straight maximum hour provision. However, maximum hour averaging provisions were commonly approved, especially in the earlier codes, and policy pronouncement was not made definitely against such provisions until the issuance of Office Memorandum No. 272 on July 31, 1934. This set forth a policy requirement of stated maximum hours, with a proviso for a definite tolerance except when unlimited tolerance was justified, with payment in either case of overtime wage for time worked above the established maximum hours. Later paragraph 1222, Part II, Office Manual, incorporated the following policy:

"Averaging in provisions governing hours of work has in practice proved unsatisfactory. Conditions of peculiar seasonal or other needs of any industry, should be met by a definite tolerance."

ARTICLE III (Continued)

"HOURS FOR CLERICAL AND OFFICE EMPLOYEES

"Section 2. No person employed in clerical or office work shall be permitted to work in excess of_____hours in any one week or_____hours in any twenty-four hour period. A normal work day shall not exceed_____hours."

Section 2 was included to aid the "white collar" employee.

ARTICLE III (Continued)

"EXCEPTIONS AS TO HOURS

"Section 3. The provisions of this Article shall not apply to travelling salesmen, or to employees engaged in emergency maintenance or emergency repair work, or to persons employed in a managerial or executive capacity who earn not less than Thirty-five Dollars ($35.00) per week.

"(Provisions governing over time payments should be inserted at this point; for example, for emergency maintenance and emergency repair, etc.)"

To prevent the evasion of the maximum hours provisions of this article by the reclassification of the duties of the employees, the $35.00 minimum weekly wage was established as the line of demarcation for employees who were to be exempt from this provision and then only if engaged in managerial work.

Many codes approved prior to the issuance of the "Model Code" exempted "outside salesmen" from the maximum hours. This term led to endless difficulty under the President's Reemployment Agreement and caused the issuance of many needless interpretations under code provisions. To eliminate confusion the term "travelling salesmen" was therefore substituted for the term "outside salesmen".

ARTICLE III (Continued)

"STANDARD WEEK

"Section 4. No employee shall be permitted to work more than _____ days in any _____ day period."

To prevent the spreading over a seven day period of the total number of hours per week an employee could work, and to give every employee one day of rest out of every seven, it was deemed advisable to have the above provision included in each code.

ARTICLE III (Continued)

"EMPLOYMENT BY SEVERAL EMPLOYEES

"Section 5. No employer shall knowingly permit any employee to work for any time which when totaled with that already performed with another employer or employers in this trade/industry, exceeds the maximum permitted herein."

This section was obviously a "spread the work" provision.

ARTICLE IV.

"WAGES"

"MINIMUM WAGES

"Section 1. No employee shall be paid in any pay period less than at the rate of _____cents per hour, except as otherwise herein provided.

"(Minimum wage adjustments based on locality and/or population may be indicated here.)"

The main objective of the minimum wage provisions of any code was to provide for workers in industry what the President had defined as a "living wage". Minimum wage rates were established for unskilled or common laborers. It was hoped that the minimum wage rate established by codes would provide a decent living for the employees, and at the time increase the purchasing power of the individual employee.

The minimum wage adjustment based on locality or population was a provision which led to much controversy between industry and labor and within industries.

At a press conference on June 20, 1933, the Administrator was asked questions pertaining to wages and wage differentials. The questions asked, and his replies are as follows:

Question. "Will the $10 and $11 wage proposed in the Textile Code create enough buying power?"

Answer. "That rate is for the lowest class of wages in the industry. That is the basis in all industries in making up the whole schedule of pay."

Question. "In effort to set up a minimum wage, do you contemplate a better wage in New York than in the South, for instance, for machinists, or a difference in wages paid to carpenters in Seattle and those in Ohio?"

Answer. "There are differences in living costs. In the common labor rate between Moline and Chicago there is a difference of about 7 cents. Yet I think the people in Moline are better off than the people in Chicago. They live in a smaller town, better advantages for children - - there is a difference in the economic structure - - that we cannot disturb. I think, however, we also recognize that there are some differences that arise from exploitation, where people are living and working at less than a living scale. We can't have that. We can help there. The thing to do is to lift these wages up where it

is practicable, and if we can get everybody to do it we will be carrying out the purpose of the Act as expressed by the President."

ARTICLE IV (Continued)

"PIECEWORK COMPENSATION - MINIMUM WAGES

"Section 2. This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece-work, or other basis."

To prevent evasion of the minimum wage provision by the placing of time rate employees on a piece rate basis, employees were guaranteed the code minimum wage by the above provision. Some industries were contracting with home workers on a piece work basis. It was thought this provision would benefit the home workers, but the desired results were not obtained because in some instances the employers withdrew their contracts with the home workers rather than guarantee them a minimum wage.

ARTICLE IV (Continued)

"MINIMUM WAGE RATES BY LOCALITY/OCCUPATION

"Section 3. After the approval of this Code, the Code Authority may present for approval to the Administrator, after notice and hearing, recommendations as to upward adjustments in minimum wages for specified localities/ occupations, in order to effectuate the purposes of the Act."

The different standards of living and the corresponding variance in purchasing power of the dollar in the different localities as well as the great variance in the standards of efficiency of southern and southwestern labor as compared with that of the other sections of the United States were the main reasons for providing for proposals of upward adjustments in the minimum wage rates for particular localities or occupations.

ARTICLE IV (Continued)

"WAGES ABOVE MINIMUM"

"Section 4."

"No employee whose normal full time weekly hours for the four weeks ending _____(date) are reduced by less than_____ per cent shall have his or her full time weekly earnings reduced. No employee whose full time weekly hours are reduced by more than said per cent shall have his or her said earnings reduced by more than_____per cent."

ALTERNATIVE SUGGESTIONS

"There shall be an equitable adjustment of all wages above minimum, and to that end, within (_____ days or months) from the approval of this Code, the Code Authority shall submit for the approval of the Administrator a proposal for adjustment in wages above the minimum. Upon approval by the Administrator, after such hearing as he may prescribe, such proposal shall become binding as a part of this Code, provided, however, that in no event shall hourly rates of pay be reduced."

:ALTERNATIVE :SUGGESTIONS

The above sections were designed to prevent undue reduction of the wage rates of employees receiving in excess of the established minimum by reason of reduction of hours under Article III. To reduce earnings would reduce purchasing power.

Paragraph 3 of Article II of the Code of Fair Competition for the Wool Textile Industry, (Code No. 3), approved on July 26, 1933, incorporated the following:

"As to wages of employees now receiving not less than the minimum wage established by this Code, no employer shall, on or after the effective date, pay any such employee a wage rate which will yield a less wage for a work week of forty hours than such employee was receiving for the same class of work for the established longer week of forty-eight hours or more prevailing prior to the effective date."

This was the first approved Code to contain this type of provision, but the first two codes approved contained provisions for the maintenance of wage differentials.

ARTICLE IV (Continued)

"FEMALE EMPLOYEES"

"Section 5, Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees."

This section protected the objects of minimum wage provisions.

ARTICLE IV (Continued)

"HANDICAPPED PERSONS"

"Section 6. A person whose earning capacity is limited because of age or physical or mental handicap may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be

stated in the certificate. Each employer shall file with the Code Authority a list of all such persons employed by him." (*)

The principal reason for the inclusion of this section was to prevent loss of employment by handicapped employees.

ARTICLE V

"GENERAL LABOR PROVISIONS"

When the President signed the National Industrial Recovery Act, he said it was passed "to put people back to work -- to let them buy more of the products of farms and factories and start our business at a living rate again. This task is in two stages - first, to get many hundreds of thousands of the unemployed back on the pay roll by snowfall and second to plan for a better future for the long pull."

With the above in mind, the NRA was striving "to plan for a better future" for the employees by including in the codes general labor provisions which would improve the standards of employment and at the same time improve the standards of health under which the employee worked.

"CHILD LABOR"

"Section 1. No person under sixteen (16) years of age shall be employed in the trade/industry. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Administrator before_____(date) a list of such operations or occupations. In any State an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly signed by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age."

Though not required by the Act, a clause prohibiting child labor appeared in every approved code. There were, however, a case or two of limited exceptions.

ARTICLE V (Continued)

"PROVISIONS FROM THE ACT (Inclusion obligatory)"

"Section 2. In compliance with Section 7 (a) of the Act it is provided:

"(a) That employees shall have the right to

(*) Section VI, Chapter V, hereof, discusses later provisions concerning employment of handicapped workers.

organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

"(c) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President."

Every approved code had to contain the above section. This section was designed for the interest of labor. During the early days of NRA many controversies arose over Section 7(a), especially as to the inclusion in the codes of special clauses sanctioning, for example, the company union and the right of employers to select, retain, or advance employees according to individual merit. A "Merit Clause" was included in the Code of Fair Competition for the Automobile Manufacturing Industry. (*)

An instruction against approval of code provisions such as "Merit Clause" was given to the Administrator in a letter from the President, as follows:

"October 19, 1933

"General Hugh S. Johnson
Administrator for National Recovery
Washington, D. C.

"Dear General Johnson:

"Following our recent discussion of various misunderstandings and misinterpretations of Section 7(a) of the National Industrial Recovery Act, I wish to advise you of my position.

"Because it is evident that the insertion of any interpretation of Section 7(a) in a Code of Fair Competition leads only to further controversy and confusion, no such interpretation should be incorporated in any code. While there is nothing in the provisions of Section 7(a) to

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(*) Article VII of the Code for the Automobile Manufacturing Industry, Codes of Fair Competition, Volume I, page 256.

interfere with the bona fide exercise of the right of an employer to select, retain or advance employees on the basis of individual merit, Section 7(a) does clearly prohibit the pretended exercise of this right by an employer simply as a device for compelling employees to refrain from exercising the rights of self-organization, designation of representatives and collective bargaining, which are guaranteed to all employees in said Section 7(a).

"Very truly yours,

Franklin D. Roosevelt"

Several weeks earlier, the General Counsel for NRA had issued to the Legal Division the following memorandum:

"August 30, 1933.

MEMORANDUM

"To: All Members of the Legal Division

"From: Donald R. Richberg

"From newspaper account it appears that there is likely to be some misunderstanding regarding the final sentence in Section 7 of the Automobile Code.

"This indicates again wisdom in adhering to the policy previously announced that nothing should be written into a Code which could be regarded in any way as a qualification, explanation or interpretation of the mandatory provisions of Section 7(a).

"The National Industrial Recovery Act requires that every code, agreement or license approved, prescribed or issued shall contain the conditions set forth in Section 7(a). This is not only a mandate that these conditions shall be contained, but also a mandate against including anything in a code which may be even misinterpreted to permit any variation from the requirements of the law. Even innocent or meaningless statements may be distorted to give some apparent sanction to evasion or violation of the law. In order to avoid such a result, it will be the policy of the Legal Division to decline to permit the inclusion in any code, not only of interpretations of Section 7(a), but of any statements which may be regarded as interpretations, or used as misinterpretations. The fact that a statement construed by me as harmless surplusage was included in the Automobile Code, furnished no precedent for any member of the Legal Division to approve the inclusion of that, or any similar statement in any other code."

However, a "Merit Clause" appeared in the approved Chemical Industry Code, but was almost immediately deleted by an Administrative Order dated February 17, 1934.

ARTICLE V (Continued)

"RECLASSIFICATION OF EMPLOYEES"

"Section 3. No employer shall reclassify employees or duties of occupations performed or engaged in any other subterfuge for purpose of defeating the purposes or provisions of the Act or of this Code."

Some of the early approved codes did not contain such a provision. In August and September of 1933 there appeared a tendency to evade the President's Reemployment Agreement and the codes which had been approved by reclassifying workers.

To prevent the reclassification of employees, or their duties or occupations performed in an attempt to circumvent the wage and hour provisions of the code, the above section was included as a model provision.

ARTICLE V (Continued)

"STANDARDS FOR SAFETY AND HEALTH"

"Section 4. Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment. (Provision may be inserted requiring the Code Authority to submit proposed minimum standards for safety and health of employees)."

The Department of Labor for a number of years had been endeavoring to improve the conditions for safety and health, to better working conditions for employees and to decrease the number of accidents in industrial establishments throughout the United States. Nevertheless, in 1933 there were 17,000 killed and 1,225,000 injured in industrial plants throughout the United States. (*)

At the request of the Administrator, the Secretary of Labor appointed a Committee to prepare Minimum Standards for Safety and Health. The Committee prepared and recommended "The Minimum Standards for Safety and Health of Workers in Manufacturing Industries" which were approved by the Secretary of Labor and the NRA Administrator. These standards were used as a guide by members of industry and Code Authorities in preparing such standards for their particular industry to be approved by NRA. (**)

(*) Accidents in Manufacturing Industries, "U. S. Department of Labor.

(**) Section VII, Chapter V, hereof, discusses later provisions concerning standards of safety and health.

ARTICLE V (Continued)

"STATE LAWS"

"Section 5. No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or faire protection, than are imposed by this Code."

No comment on this provision seems necessary.

ARTICLE V (Continued)

"POSTING"

"Section 6. All employers shall post complete copies of this Code in conspicuous places accessible to employees."

The above provision was included in order that an employee might easily obtain knowledge of the labor provisions of the code governing his employment. (*)

ARTICLE VI

"Organization, Powers and Duties of the Code Authority"

"ORGANIZATION AND CONSTITUTION"

"Section 1. There shall forthwith be constituted a Code Authority consisting of _____ persons to be selected in the following manner:

(Here shall be stated the manner in which the members of the Code Authority shall be selected. Provision should be made so that the Code Authority will be truly representative of the various majority, minority, and other interests in the trade/industry. If, however, by reason of conditions peculiar to the trade/industry, selection by the trade-industry is impossible, it may be provided that appointment shall be by the President.)"

This section provided for the establishment of a Code Authority, and sets out certain standards as to its representative character. While much leeway was left an industry with respect to its proposals, and many methods of selection or election were authorized by the codes,

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(*) Section XVII, Chapter V, hereof, discusses later provisions concerning posting.

the N.R.A. intent was to assure the designation of a membership representative of the entire industry.

ARTICLE VI (Continued)

"Section 2. In addition to membership as above provided, there may be _____members, without vote, to be appointed by the President, to serve for term of _____months from the date of appointment."

Government representation on the code authority was for the purpose of keeping the Administrator informed as to the action taken by this body, and also the Government member was to act as an adviser to the Code authority.

ARTICLE VI (Continued)

"Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act."

Section 3(a) of Title I of the Recovery Act granted the President power to approve codes, provided the applicant group imposed no inequitable restrictions on admission to membership in said group. The above provision was based on this section of the Act.

ARTICLE VI (Continued)

"Section 4. In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority." (*)

This provision gave the Administrator power to modify the method of election of the Code authority if he found that the code authority was not truly representative or did not otherwise comply with the Act.

ARTICLE VI (Continued)

"Section 5. Members of the trade/industry shall be entitled

(*) Section III, Chapter V, hereof, discusses the review of acts of code authorities by the Administrator.

> to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable." (*)

The purpose of the above section was to provide for the expenses of code administration by the Code Authority.

Some members of industry and certain individuals in the NRA expressed the opinion that such a provision included in a code would be used by the Code Authorities as a weapon to coerce non-association members of the industry to join the association or associations which were the applicant group of the industry for a code.

During the early period of code making, the question was constantly arising as to whether a code could include a provision which required all members of an industry to share the expenses of administration of the code. Some felt that such a condition had been brought about by a "racket" of association organizers and lawyers who were framing codes and who expected to collect reimbursements by levying the pro rata share on the members of the industry.

John M. Keating, an Assistant Counsel of the NRA Legal Division, in a memorandum, August 15, 1933, to the Associate Counsel, on "Policy Matters of Code Administration," said:

> "Personally, I feel that there is no power In Title I of the National Industrial Recovery Act to levy a tax and that this would be illegal for that reason. Further than this I do not believe we would have the right to delegate power to levy this cost to any association.
>
> "In connection with this matter I direct attention to the following paragraph which was contained in the Coat and Suit Industry Code.
>
> "The expenses of maintaining the Coat and Suit Code Authority shall be borne by the International Ladies' Garment Workers Union, the parties of this Code, and all other employers in the industry in such proportions and amounts and in such manner as may be determined by the Coat and Suit Code Authority.'"

The Legal Division, on August 23, 1933, informed its staff relative to code administration expense provisions in codes, as follows:

(*) Section IX, Chapter V, hereof, discusses later provisions concerning mandatory assessments.

"We have approved the imposition of pro rata cost of maintenance of Code Authority activities, as distinguished from trade association activities, on those who accept the benefits of such Code Authority activities."

The provision which was included in the "Model Code" was questioned for the reason that whether or not a concern formally assented to a code, it should be entitled to participate in the selection of the Code Authority. Apparently some individuals did not comprehend the phrase "and share the benefits of the activities of the Code Authority", and others could not contemplate any benefits of the activities of a Code Authority, which would or should not accrue to every member of an industry.

On September 21, 1933, the Associate Counsel of the NRA legal Division received a memorandum from the Code Analysis Division commenting on the proposed provisions that were to be incorporated in the Model Code of October 1, 1933 (Exhibit 9).

The Assessment provision was questioned because it was thought that such provision might be construed to mean that every member of an industry would be compelled to pay a pro rata share of the cost of Code Administration of the Code through the Code Authority, and if such provision were included in an approved Code it would be legally binding and would become law for the industry. It was agreed that such assessments would be in the nature of taxation and would place an additional burden on the taxpayer. It was recommended that the responsibility of raising revenue for Code Administration should be placed entirely upon the Trade Associations.

The model code provision for assessments when included in approved code placed no legal liability on a member of an industry to pay code assessments. Subsequently, however, the NRA permitted mandatory assessment provisions.

The Code of Fair Competition for the Electrical Manufacturing Industry (Code No. 4) was the first approved code to contain a provision to provide for the expenses of code administration (*).

ARTICLE VI (Continued)

"Section 6. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful misfeasance or non-feasance."

(*) Article VII of the Code for the Electrical Manufacturing Industry, Codes of Fair Competition, Volume I, page 48.

The above provision was inserted as a legal protection for Code Authority members.

ARTICLE VI (Continued)

"POWERS AND DUTIES"

"Section 7, The Code Authority shall have the following further powers and duties, the exercise of which shall be reported to the Administrator and shall be subject to his right, on review, to disapprove or modify any action taken by the Code Authority.

"(a) To insure the execution of the provisions of this Code and provide for the compliance of the trade/industry with the provisions of the Act.

"(b) To adopt by-laws and rules and regulations for its procedure and for the administration and enforcement of the Code.

"(c) To obtain from members of the trade/industry such information and reports as are required for the administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, which information and reports shall be submitted by members to such administrative and/ or government agencies as the Administrator may designate; provided that nothing in this Code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual reports shall be disclosed to any other member of the trade/industry or any other party except to such governmental agencies as may be directed by the Administrator.

"(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to comply with the provisions hereof.

"(e) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to the trade/industry.

"(f) To secure from members of the trade/industry an equitable and proportionate payment of the reasonable expenses of maintaining the Code Authority and its activities.

"(g) To cooperate with the Administrator in regulating the use of any N. R. A. insignia solely by those members of the trade/industry who have assented to, and are complying with, this Code.

"(h) To recommend to the Administrator further fair trade practice provisions to govern members of the trade/industry in their relations with each other or with other trade/industries and to recommend to the Administrator measures for industrial planning, including stabilization of employment."

The original idea as to code administration was that each industry was to be governed by a self-chosen group, with broad powers of administration as to all matters pertinent to the code with the least possible regulations by the Government. Industry was to be its own ruler, within the limitations of its code. Some NRA officials were of the opinion that the trade associations were to be given all the power they needed to govern properly the affairs of their industries. They were to be enforcing agencies. They were to be taught gradually to be independent of Government authority in administering the provisions of their codes.

Each industry was to govern itself. Only in those instances where ignorant, stubborn or malevolent elements of an industry refused to play the game, and were found incapable of regulations by the industry's self-governing agency, would the National Recovery Administration step in, and even then, only upon request. (*)

Some few of the earlier approved codes contained provisions which enabled the members of the Code Authority, who were also members of the industry, to secure secret and confidential information as to other members' mode of operation, sales, and financial conditions. An example of powers given the Code Authority was the provision in the Coat and Suit Industry Code which was as follows:

"The Coat and Suit Code Authority shall have power to examine all books of accounts and records of employers so far as necessary to ascertain whether they are observing the provisions of this Code, and all employers shall submit their books and records for such examination."

On August 15, 1933, Mr. Keating commented in a memorandum to the Associate Counsel as follows:

(*) NRA Press Release No. 654, September 8, 1933.

"In a number of codes which I have examined attempt is made to give the Code Authority the right to examine the books of the units in the industry. This is a field in which I feel we should go extremely slowly. Particularly is this true when there is no restriction on data which the Code Authority can require from the individual unit. The tendency, as you know, over the United States at the present time is not to give this right to stockholders of a corporation unless they desire the information for some legitimate purpose. I note that the Coat and Suit Industry Code which was approved by the President permits this practice."

On November 4, 1933, the following NRA Press Release (No. 1566) stated the position of the Administrator relative to the administration of codes:

"General Johnson today made the following statement in regard to the administration of codes by code authorities, trade associations and other agencies of industrial self-government:

"The function of code administration lies primarily with the Code Authority provided for in each Code. Nevertheless, it is the responsibility of the National Recovery Administration that the Code be administered. Whenever, as in the Bituminous Coal Code, an industry is organized for self-discipline that function will be accorded it. But in many instances industries are not so organized that they have machinery appropriate to the adjustment of complaints of violations of the trade practice, and other provisions of their Codes.

"The organization of very few industries is at this time appropriate for the adjustment of complaints of violations of the labor provisions of Codes. While, in every case, where the authority is organized, adjustment of fair trade practices will be left to the Code Authorities, as a general rule the code provides no plan for the adjustment of their labor provisions. The Code Authority will be permitted to function on labor disputes when provision is made for adequate representation of labor on all committees, boards or other agencies set up to entertain and adjust complaints by employees against their employers for violations of labor provisions.'"

ARTICLE VII.

"Trade Practice Rules

"(NOTE: Sponsors of codes, in preparation of drafts for submission to NRA, should select from the following such rules as are deemed applicabel to their particular trades or industries and may set forth such other rules as may be deemed desirable, to meet conditions peculiar to

their trade/industry, covering such subjects as:

Returned goods
Methods of leasing equipment
Sales by sample
Espionage
Trade discounts and/or selling terms
Transportation practices
Design piracy
Price or special guarantees
Advertising allowances.
Etc.)

"Rule 1. Inaccurate Advertising.

"No member of the industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trade-mark, grade, quality, quantity, size, substance, character nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

"Rule 2. False Billing.

"No member of the industry shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

"Rule 3. Inaccurate Labelling.

"No member of the industry shall brand or mark or pack any goods in any manner which is intended to or does decive or mislead purchasers with respect to the brand, grade quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

"Rule 4. Inaccurate References to Competitors, etc.

"No member of the industry shall publish advertising which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services.

"Rule 5. Selling Below Cost.

"(Provisions may be inserted against selling below cost based upon principles of costing formulated by the Code Authority and approved by the Administrator. Such provisions should be applicable to the individual industry

and should take into consideration the necessity of selling below cost to meet competition, to dispose of distress merchandise etc.)

"Rule 6. Threats of Law Suits.

"No member of the industry shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers. Failure to prosecute in due course shall be evidence that any such threat is unwarranted or unjustified.

"Rule 7. Secret Rebates.

"No member of the industry shall secretly directly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall as member of the industry secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

"Rule 8. Selling on Consignment.

"No member of the industry shall ship goods on consignment except under circumstances to be defined by the Code Authority, where peculiar circumstances of the trade/industry require the practice.

"Rule 9. Bribing Employees.

"No member of the industry shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party.

"Rule 10. Interference with Another's Contracts.

"No member of the industry shall attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such member interfere with or obstruct the performances of such contractual duties or services.

"Rule 11. Coercion.

"No member of the industry shall require that the purchase or lease of any goods be prerequisite to the pruchase or lease of any other goods.

"Rule 12. Blacklisting.

"No member of the trade/industry shall join or participate with other members of the trade/industry who with such member constitute a substantial number of members of the trade/industry or who together control a substantial percent of the business in any specific product or products of the trade/industry, in any transaction known in law as a black list, including any practice or device (such as a white list), which accomplishes the purpose of a black list."

As heretofore noted, an NRA - Commerce Committee on Basic-Code of Fair-Practices began in July, 1933, to study the work of the Federal Trade Commission over the preceding 14 years as to trade practice conferences and the resulting rules of fari practice.

On September 11, 1935, a confidential report was made to the Associate Counsel of the NRA Legal Division by the other members of the Committee which said in part:

"We have carefully checked each of the more than 1,000 rules approved by the Federal Trade Commission since 1919, and are able to classify all of real importance under six basic principles which we present herewith.

"More than 150 Trade Practice Conferences were held during this period. More than 200 trade associations participated. As you know, there is a distinct and significant change in the legal phraseology used by the Commission prior to and since May, 1931, caused by adverse decisions of the United Supreme Court along the general line of thought that the Commission and exceeded its legal powers in its early rulings. Our study which was the basis of this report to you included both old and new rules, realizing full well that although the Commission felt its hands to be tied after May, 1931, the National Industrial Recovery Act imposed no such restrictions."

The six basic principles, and the divisions thereof, as recommended by this Committee are as follows:

I. INACCURACY

(1) Inaccurate Advertising
(2) "Bait" Advertising
(3) Inaccurate Labelling

II. ATTACKING COMPETITORS

(4) Inaccurate Reference to Competitors, etc.
(5) "We undersell all Competitors."
(6) Selling below Cost
(7) Threats of Lawsuits

III. PRICE DISCRIMINATION

(8) Secret Rebates
(9) "Free" Goods
(10) Selling on Consignment

IV. COMMERCIAL BRIBERY

(11) Bribing Employees
(12) False billing

V. BREACH OF CONTRACT

(13) Interference with another's Contracts
(14) Repudiating one's own Contracts

VI. COERCION

(15) "Tying" and "block-booking" Contracts
(16) Black (or white) lists

On September 28, 1933, this Committee made an additional report (Exhibit 6) to the Associate Counsel, which was in more detail than the previous report of September 11, 1933, but it contained the same 16 rules formerly recommended. October 29, 1933, NRA Press Release No. 1435 and the leading newspapers of the country carried an account of the Committee's report. The publicity given to this report gave to industry an idea as to the trade practice rules, which the NRA in the future would advocate for codes. Of the sixteen rules recommended by the Committee twelve were included in the "Model Code". The rules pertaining to "Bait" Advertising, "We undersell all competitors", "Free" Goods, and Repudiating one's own contracts were omitted.

ARTICLE VIII

"Export Trade"

"Section 1. No provision of this Code relating to prices or terms of selling, shipping or marketing, shall apply to export trade or sales or shipments for export trade."

For the industries whose codes contained provisions as to sales below cost, production control and allocation, classification of customers, minimum price, price cutting emergencies, and other marketing and distribution devices, the above section was added for the benefit of members engaged in foreign trade, to enable them to compete with foreign manufacturers. The hour and wage provisions, however, continued to apply to them.

ARTICLE VIII (Continued)

"Section 2. Subject to the approval of the Code Authority, the exceptions established by this section shall apply also to sales or shipments of materials actually used in manufacture for export trade.*

ARTICLE IX

"Modification"
(Inclusion of Section 1
Obligatory)

"Section 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under such Act."

The inclusion of this section was mandatory under Section 10 (b) of the Act.

ARTICLE IX (Continued)

"Section 2. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the President."

(*) A provision may be introduced into the administrative section of the Code, providing that questions relating to production for export, not enumerated in the above section, may be submitted by any member of the trade/industry to the consideration of the Code Authority; and that its decision thereon shall be submitted to the Administrator and shall not be effective unless and until approved by him."

ARTICLE X

"Monopolies, etc."

"No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises."

Section 3 (a) of the Act granted the President power to approve codes, "Provided, that such code or codes shall not permit monopolies or monopolistic practices." Though the Act did not specifically provide for the inclusion of this Article, it was thought desirable by N.R.A. to include it in each code.

ARTICLE XI

"Price Increases"

"Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual cost should be delayed, but when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs."

When the President signed the Act he said:

"I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full effect of this plan unless, in these first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible. If we can thus start a strong sound upward spiral of business activity our industries will have little doubt of black-ink operations in the last quarter of this year. The pent-up demand of this people is very great and if we can release it on so broad a front, we need not fear a lagging recovery. There is greater danger of too much feverish speed." (*)

(*) NRA Bulletin No. 1.

This Article was a declaration of NRA policy based on the President's statement.

"ARTICLE XII"

"Effective Date"

"This Code shall become effective on the second Monday after its approval by the President, (unless otherwise stated.)"

To avoid any misunderstanding, and in order that members of industry and the public should definitely know when a code became effective, this or a similar provision was included in every code approved.

CHAPTER V

NRA PRONOUNCEMENT AFFECTING MODEL CODE PROVISIONS

The period of code making overlapped that of code administration, and the experience gained from the latter was an aid in the formulation of policy for the former; therefore, certain policies expressed in the November 6, 1933, issue of the Model Code were changed, and many additional provisions were found desirable. Certain provisions made mandatory by Executive Orders were added. Various Office Orders and Office Memoranda announced official policies to the personnel of NRA and to industry, which policies were recommended for consideration in future code making or as code amendments. This chapter discusses the changes in the Model Code provisions effected by the foregoing pronouncements.

I. COMMERCIAL BRIBERY

Due to widespread misunderstanding concerning the commercial bribery and advertising provisions in codes, and reports received by the Administrator that because of this misunderstanding advertising novelty manufacturers were losing business, the President issued Executive Order No. 6464 (Exhibit 12) on November 27, 1933. This Order stated that commercial bribery provisions were not not to be construed "to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery***." This Order modified any inconsistent "commercial bribery" provisions which had been included in codes prior to its issuance, and prescribed that all codes approved subsequently should conform to the model provision set forth in the Executive Order.

II. STATISTICAL INFORMATION

On December 7, 1933, the President by Executive Order No. 6479 (Exhibit 13) modified all codes approved previously to provide "that, in addition to information required to be submitted to any code authority, all or any of the persons subject to such code, agreement, or license furnish such statistical information as the administrator may deem necessary for the purposes recited in 3 (a) of said Act to such Federal and State agencies as the Administrator may designate;***."

The above Executive Order also provided that every code, license, or agreement approved subsequent to the issuance of this Order should contain the above quoted provision.

III. REVIEW OF ACTS OF CODE AUTHORITIES

Article IV, Section 3 of the Code of Fair Competition for the Cap and Closure Industry, approved October 20, 1933, incorporated the following provision:

> "In addition to the powers herein specifically conferred upon the Code Authority, it shall have the following powers and duties to the extent permitted by the Act, subject to the right of the Administrator, on review, to disapprove or modify any action taken."

The Code of Fair Competition for the Funeral Supply Industry, approved November 4, 1933, contained the following provision:

"The Code Authority or its duly authorized committees, officers, or agents, shall cooperate with the Administrator as a planning, coordinating, Administrative, and fair practice agency for the Funeral Supply Industry, and shall keep the Administrator informed as to the functioning and observance or non-observance of any of the provisions of this code, and shall have the following duties and powers to the extent permitted by the National Industrial Recovery Act, subject to right of the Administrator on review to disapprove or modify any action taken by such code authority or its duly authorized representatives." (*)

Some code sponsoring committees objected to provisions similar to those quoted above, on the ground that such provisions gave power to the Administrator to modify actions of the code authority, whereas the code authorities were established to promote self-government of industry and if the Administrator were to have power to modify their actions they would never know where they stood. No objections were raised to the power granted to the Administrator to disapprove actions of the code authority, because such disapproval would "wipe the action from the slate."

To meet the above objections the following memorandum was issued by the General Counsel of NRA to the members of the Legal Division:

"November 22, 1933

MEMORANDUM TO ALL MEMBERS OF LEGAL DIVISION

It is not required and it is not proper, except in special instances, to grant in a Code any general power to the Administrator to review and modify actions taken by the Code Authority. If anyone insists upon incorporating such clause, you may refer to this memorandum as a statement of policy to promote self-government of industry, as distinguished from political government of industry, which should guide the Legal Division."

For the guidance of NRA personnel the following Office Memorandum of January 2, 1934, was issued:

"In lieu of provisions heretofore used in codes, referring to approval or disapproval by the Administrator of acts of code authorities, the following provision should hereafter be incorporated in all codes:

If the Administrator shall determine that any action of a code authority or any agency thereof is unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended for a period of not to exceed thirty days to afford an opportunity for investigation of the merits of such action and further consideration by such code authority or agency pending final action, which shall be taken only upon approval by the Administrator."

(*) Article VII, Section 2 of the Code for the Funeral Supply Industry, Codes of Fair Competition, Volume II, page 429.

Objection made to this memorandum resulted in its revision by an Office Memorandum issued January 27, 1934, as follows:

> "In lieu of provisions heretofore used in codes, referring to approval or disapproval by the Administrator of acts of code authorities, the following provisions should hereafter be incorporated in all codes:
>
> If the Administrator shall determine that any action of a code authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such code authority or agency pending final action which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty days' notice to him of intention to proceed with such action in its original or modified form."

IV. SELLING BELOW COST, OPEN PRICE FILING, AND PUBLIC ACCOUNTANT PROVISIONS

The "selling below cost" provisions in codes were the cause of much dissension within industry. The NRA had intended that such provisions should be used as a preventive of destructive price cutting, which had been carried on by some members of industry prior to the passage of the Act. It was the opinion of the Administration that they would result in abolishing the "loss leader" items used by retail and wholesale concerns, in the past to stimulate sales. The Code Standardization Group which had formulated the Model Code believed that each industry could draft a suitable provision for its code. A large number of "selling below cost" provisions merely suggested that the Code Authority determine and submit to the Administrator for his approval provisions against selling below cost.

The Model Code of November 6, 1933, had not set forth a model provision for "selling below cost," but stated:

> "(provisions may be inserted against selling below cost based upon principles of costing formulated by the Code Authority and approved by the Administrator. Such provisions should take into consideration the necessity of selling below cost to meet competition, to dispose of distress merchandise, etc.)"

To establish a guide and to further uniformity in code provisions the following Office Memorandum was issued on February 3, 1934:

> "The following has been approved as a standard provision for codes relating to limitation of prices:
>
> 'When the Code Authority determines that an emergency exists in this industry and that the cause thereof is destructive price-cutting such as to render ineffective or seriously endanger the maintenance of the provisions of this Code, the Code Authority may cause to be determined the lowest reasonable cost of the products of this industry, such determination to be subject to

such notice and hearing as the Administrator may require. The Administrator may approve, disapprove, or modify the determination. Thereafter, during the period of the emergency, it shall be an unfair trade practice for any member of the industry for which the lowest reasonable cost has been determined at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than the lowest reasonable cost of such products.

"When it appears that conditions have changed, the Code Authority, upon its own initiative or upon the request of any interested party, shall cause the determination to be reviewed."

This provision should be recommended to industries as desirable in new codes, and of course, may be used as a substitution in any approved code if the industry desires.

Under this provision no exception to meet lower cost competition within the industry is necessary.'

Other exceptions, as to distress stocks, for export purposes, and to compete with lower-cost imports, may remain as at present."

Much study was given to the question of the sales-below-cost provisions. Finally it was referred to the NRA Trade Practice Policy Board for further study and recommendations. Office Memorandum No. 228, issued June 7, 1934, Exhibit 14 contained the recommendations of this Board. Model provisions on "Costs and Price Cutting" were set forth in this memorandum, which was generally concurred in by the Advisory Boards as well as the Legal and Research and Planning Divisions.

Another device used in the effort to prevent price cutting was a provision for open price associations or a price filing system. The provisions for price filing in early codes called for a waiting period, usually of 10 days, before the prices filed should be effective. This arrangement was open to abuse and to rectify the situation, Office Order No. 63-B, January 27, 1934, made the following announcement of policy:

"As a result of the price change hearing a study is being made of open price associations. This study particularly involves the waiting period before filed prices become effective. Therefore, any provision for a waiting period in codes not yet approved will be stayed in the Executive or Administrator's Order of approval for sixty days, or pending completion of the study."

The open price filing system provisions were also referred to the Trade Practice Policy Board for study and recommendations. Exhibit 1 of Office Memorandum No. 228 incorporated the recommendations on this subject which were officially adopted.

To provide a standard provision for uniform cost accounting, the following clause was recommended to be used in code drafting:

> "The Code Authority shall cause to be formulated an accounting system and methods of cost finding and/or estimating capable of use by all members of the industry. After such system and methods have been formulated, full details concerning them shall be made available to all members. Thereafter all members shall determine and/or estimate costs in accordance with the principles of such methods." (Office Memorandum of January 29, 1934.)

It was pointed out that the advantage of the above clause was two-fold: (1) it was completely divorced from the selling-below-cost clause, and (2) it introduced the idea of cost estimating, which was the thing some industries needed rather than, or in conjunction with, cost accounting.

To aid members of industry in computing the cost of their commodities the code authorities had set up cost accounting systems, some few of which were very elaborate and expensive. Some codes provided that an accounting system should be drafted by a certified public accountant". To prevent discrimination against other accountants the following Office Memorandum was issued November 22, 1933, to clarify the situation, and misinterpretation which had been applied to such provisions:

> "Some codes vest duties in publich accountants, who are quite generally referred to as 'certified public accountant'. This is a common usage which overlooks the fact that there are other public accountants equally suitable to perform the same work as certified public accountants. Whenever any code provision imposes duties on public accountants, therefore, it should read in manner such as the following: "by a certified public accountant or by an accountant having the equivalent in qualifications and ability of a certified public accountant, provided, however, that as to any service to be performed in any particular state or governmental subdivision of the United States, such accountant in any event shall have the qualifications required by law in such state or governmental subdivision of the United States for the performance of such service."

To further clarify the above, the following Office Memorandum was issued January 29, 1934:

> "In answer to objections which have been raised against the provision referring to public accountants in office memorandum of November 22, 1933, as tending to prefer some classes over others, the following wording is suggested for codes imposing duties in public accounting:
>
> 'by a certified, registered, chartered, or any other practitioner of public accountancy'

"Of course, the industry is entitled to define what type of accountant it desires to use, but it is believed that industries in general have no desire to discriminate, and it is suggested that the above language be recommended to industries so that no unintentional discrimination may be made."

Office Memorandum No. 228, previously referred to, was undoubtedly one of the most important announcements in NRA administration. It established the policy that was to govern pricing practices under codes and amendments in the future. This policy was determined by the Administration after months of study and experimentation, and was generally concurred in by the Advisory Boards, the Legal, and Research and Planning Divisions. In brief the policy was as follows: To ban fixing even of minimum prices except in emergencies when it was necessary to halt destructive price cutting, protect small enterprises, curb monopolistic tendencies or maintain code wages and working conditions; to permit price filing, where desired by an industry, with a confidential disinterested agency for distribution to all members of the industry and customers willing to pay for the service---such posted prices not to be changed for 48 hours. Policy also announced in this Office Memorandum, was to encourage the inclusion of model cost finding and accounting provisions, which should, however, not be obligatory, but not to encourage uniform additions in the form of percentages or differentials designed to bring about arbitrary uniformity in cost or prices.

An important feature of the new policy was that machinery was set up to prevent cut-throat price competition between emergency periods. Any interested individual was permitted to complain of destructive prices to the code authority, which, if it was unable to adjust the situation to the satisfaction of the complainant or respondent, was to refer the complaint to the Research and Planning Division of NRA.

The plans of certain code authorities for the approval of elaborate accounting systems were hastily discarded after the issuance of Office Memorandum No. 228. Thereafter, except in cases of emergencies, accounting systems were approved only provided they were to be used only for educational purposes among the members of the industry.

The issuance of this memorandum was the cause of much confusion among members of industry. To give industry the proper interpretation of the purpose of the memorandum the following announcement was made (Release NO. 5682) by the Administrator on June 9, 1934:

"There seems to be widespread and misunderstanding about the recently announced N.R.A. price policy. The main purpose of that announcement was to obtain some uniformity in future codes and, while it is our hope that industries under approved codes may desire to agree to changes, the policy order does not now effect them and will not unless and until the adjustment has been worked out in negotiations with the interested code authorities. In no event will there be any imposed change in an approved code or any change suggested without relation to the particular conditions.

in that industry.

"It should be clearly understood that all of the provisions of approved codes, including their price provisions are in full force and effect and must be complied with.

"This applies for example to those of all Retail Trades including Automotive Dealers, Bituminous Coal, all Lumber and Timber Products and Building Materials, Electrical, Rubber Tires, Paper Industries, Graphic Arts and Printing, Bus, Trucking, and Transport, Garment and Textiles, Radio and all durable goods industries. I mention these codes specifically only because this is where the misunderstanding has been most general. Omission to mention any other does not mean that the general statement just made does not apply to them."

V. TRADE PRACTICE COMMITTEES

To encourage code authorities of closely related industries to coordinate their trade practice rules, a model provision for the establishment of a trade practice committee, incorporated in Office Order No. 66, was recommended to be used in the formulation of new codes and revisions of approved codes.

The text of the Office Order was as follows:

"TRADE PRACTICES AFFECTING RELATIONSHIPS BETWEEN MEMBERS UNDER DIFFERENT CODES

"Trade practices incorporated in codes usually deal effectively with the relationships between all employers subject to the code. On the other hand, the equally important relationships existing between production employers and distribution employers who are under different codes have not been dealt with to any extent and, of course, cannot be dealt with so readily as in the first case. However, it is equally important that fair trade practices be established in the latter case.

"It is desired that the following paragraph be recommended to all industries who are in the course of formulation of new codes or the revision of approved codes for inclusion among the powers and duties of the code authority:

'To appoint a trade practice committee which shall meet with the trade practice committees appointed under such other codes as may be related to the trade/industry for the purpose of formulating fair trade practices to govern the relationships between production and distribution employers under this code and under such others to the end that such fair trade practices may be proposed to the Administrator as amendments to this code and such other codes.

"In this connection attention is invited to section 7 (e) of the Suggested Outline of Codes which has been incorporated in a number of approved codes and which authorizes the code authority to make recommendations to the Administrator for coordination of the administration of related codes. Under this clause any existing code authority may proceed as suggested above."

VI. PROVISIONS GOVERNING EMPLOYMENT OF HANDICAPPED WORKERS

President Roosevelt issued Executive Order No. 6606-F on February 17, 1934 (Exhibit 15) providing that a person whose earning capacity was limited because of age, physical or mental handicap, or other infirmities could be employed on light work at a wage below the minimum that was established by a code.

The Order was intended to clarify the question whether minimum wage and maximum hour provisions of codes were to prevent those handicapped by physical or mental defect, age or other infirmity from having their former opportunities of employment.

It was ordered that no provision of any code previously or thereafter approved was to be so construed or was to be applied so as to violate the rules and regulations quoted in Executive Order No. 6606-F.

The following press release (No. 6557) issued July 23, 1934, gives the report of an N.R.A. Commission which made a study of the effect of codes upon employment of physically or mentally handicapped workers:

REPORT OF NRA COMMISSION TO STUDY EFFECT OF CODES UPON EMPLOYMENT OF PHYSICALLY OR MENTALLY HANDICAPPED WORKERS

Employers must be induced to hire 'a proper proportion' of handicapped persons or the great bulk of such workers will have to be pensioned and kept in idleness 'at enormous cost to the public', the special commission appointed by National Recovery Administrator Hugh S. Johnson to study the effect of codes upon employment of the physically or mentally handicapped, reports in findings made public today.

The report, which is signed by Oscar N. Sullivan, Frederic Woodward and Stanley P. Davies, the latter secretary and general director of The Charity Organization Society of New York, calls upon industry to adopt, voluntarily, 'a right minded and socially desirable' attitude toward sub-standard workers and to make it possible for those 'who are not less than 50% deficient' to receive regular employment.

The Commission's report is based upon field studies made in 14 representative cities and upon an analysis of replies to an intensive questionnaire sent to all vocational rehabilitation supervisors in the country as

to private placement agencies for the handicapped and a selected list of social service agencies. While the net results, the report declares, 'are not in the nature of things reducible to statistical form', the conclusions reached represent 'a careful evaluation after allowing for varying conditions'.

Regarding the rumored wide-spread discharge of handicapped employees immediately prior to or following the adoption of codes, the report declares that 'in many localities no instances of this were found at all', though the report 'seemed to be well-founded' in Massachusetts.

Similarly, but few instances were reported of efforts to employ efficient handicapped workers under sub-standard certificates, though the commission recommended, as desirable, 'a check-up of this and other features' at a later date.

With regard to the employment of handicapped 'who are indisputably sub-standard', the report declares that many elements of disagreement were found, with the most frequently expressed opinion to the effect that not enough of the sub-standard were obtaining employment and that 'the percentage limitations on the number of sub-standard employees in any one establishment, as well as the reduction that could be made in the minimum wage, were not flexible enough to meet conditions.'

As to the extent to which handicapped workers have participated in the re-employment program, the commission found a wide diversity of conditions. In a number of places, notably Grand Rapids and Michigan in general, Louisville and Hartford, 'strong testimony was given that the N.R.A. had been the cause of much new employment' and that the handicapped 'had benefitted directly thereby'. In other places, the report stated, 'the evidence seemed to be that the handicapped were no better off and no worse off than they were before.'

Reporting on the proposals for bringing about increased employment of handicapped, the commission declared:

'Some of them, although good, obviously did not come within the scope of the National Recovery Administration. Of such character was the suggestion that the federal government and other governmental agencies should set the example to business and industry by adopting regulations which would make certain the allocation of a fair proportion of public positions to the handicapped.

'Also meritorious, though outside the province of the N.R.A, except insofar as it related to sheltered workshops, was the proposal of a group of social thinkers that the handicapped not absorbable by industry be encouraged to produce well-selected and standarized articles that could be marketed in the government purchase field.'

'Suggestions which the commission found desirable were included in a recommendation that the National Recovery Administration 'call to the attention of all coded industries .... as socially desirable measures for their codes, either in a mandatory way or as recommended practices, the following:'

'(a) Every employer should, whenever the nature of the disability or the individual personality does not negative such a step, re-hire in suitable employment persons who have received permanent injuries in their employ.

'(b) Employers should in the ordinary course of expansion call back one equal basis with other handicapped workers who have been in their employ within the last four years.

'(c) Employers should endeavor to have a suitable proportion of handicapped workers, whether sub-standard or fully efficient, in the ranks of their employees in order to make certain of a fair distribution of opportunity to work. This proportion in all probability would be as large as two percent and might even be close to five percent'."

VII. STANDARDS FOR SAFETY AND HEALTH

In Chapter IV of this report, comment was made as to the necessity for the inclusion in the Model Code of a provision for standards for safety and health of employees.

In Office Order No. 71 of March 14, 1934 (Exhibit 16) the manner in which the provisions for safety and health were to be drawn was outlined.

A Committee on Standards for Safety and Health for Codes was appointed by the Secretary of Labor to formulate the minimum standards for safety and health of workers in manufacturing industries. The standards recommended by this committee were used by many code authorities. The standards submitted by the code authorities when approved by the Administrator, in accordance with Administrative Order No. X-51, June 15, 1934)Exhibit 17), became part of the code governing the particular industry, and were enforceable as any other provision of the Code.

VIII. PREMIUMS.

Among the fair trade practices of certain codes were provisions prohibiting the use of premiums. The following were some of the specific forms of this practice prohibited:

Salt Producing Industry - Article IV, Section 9.

> "Offering of salable gifts or prizes."

Can and Closure Industry - Schedule A, Section G.

> "Free deals and/or contributions --- The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto."

Industrial Supplies and Distributors Trade - Article VI, Section 3.

> "The payment or allowance of secret rebates, refunds, discounts, commissions, or other special considerations or allowances, including donations, gifts, or premiums of any nature whatsoever to any firm or individual."

Asbestos Industry - Article VII, Section 3.

> "To subsidize buyers by special donations, give premiums."

Toy and Plaything Industries - Article VII, Section 11.

> "The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto, by any scheme which involve lottery, misrepresentation, or fraud."

Gas Appliance and Apparatus Industry - Article X, Section 6.

> "Using premiums in the sale of merchandise."

The premium problem proved to be quite troublesome. There were irreconcilable conflicts between the desires of certain non-premium industries on the one hand and concerns engaged in the manufacture and distribution of premiums on the other. The manufacturers of novelty goods which were extensively used in premiums had built up a considerable industry and employed a large number of persons. In addition, other products which were not intrinsically related to the manufacture of premiums were purchased for premium use. The first statement of policy on the subject of premiums was announced in the Policy Memorandum of October 25, 1933. Later the policy as to premiums was revised, as announced in Office Memorandum of March 19, 1934, as follows:

"The use of premiums or coupons may be prohibited by an industry when the desire for such prohibition is general.

"Prohibition of the use of premiums or coupons will not be approved where a member of the industry has been accustomed to make a proper use of premiums or coupons and objects to the prohibition."

Many protests were received by NRA from the manufacturers of articles used for premiums and from business concerns whose businesses were conducted on a premium basis. They felt that they were being discriminated against and that the prohibition of premiums was not in accord with the purposes of the Act.

The result of this criticism was that the problem was referred to the Trade Practice Policy Board for study and recommendations, which were made public in Office Memorandum No. 232, issued June 12, 1934 (Exhibit 18).

The term "free deals" was used in certain codes, and to clarify the question whether those were to be classed in the same category as premiums Office Memorandum No. 316 of December 6, 1934 (Exhibit 19) was issued to supersede Office Memorandum No. 232.

IX MANDATORY ASSESSMENTS.

Under Article VII, Section 7(f) of the Model Code of November 6, 1933, no legal liability to pay code assessments existed unless a contractual obligation to pay had been created by an assent to the code. Presumably on the theory that all members of the industry, whether assenting to codes or not, received benefits from the operation of the codes, Executive Order No. 6678, dated April 14, 1934 (Exhibit 20), was issued authorizing the code authorities to amend their codes by the inclusion of a mandatory assessment provision and provisions which would permit the code authority to incur reasonable obligations necessary for its expenses and to submit to the Administrator for his approval an itemized budget and an equitable basis of contribution. It also permitted the code authority to institute legal proceedings for the collection of the equitable contribution. The mandatory assessment provision was to be effective only after approval by the Administrator of the budget and basis of contribution.

N.R.A. Press Release No. 4434 of April 15, 1934, with reference to the purpose of the order, stated:

"Under the order, which eliminates racketeering through provisions for prior approval of both rates and budgets by the Administrator, non-payment of an equitable contribution is to be a code violation subjecting the delinquent to withdrawal of all Code benefits and loss of the Blue Eagle as well as to a suit which may be brought by the Code Authority."

Simultaneously with the issuance of Executive Order No. 6678, the Administrator issued Administrative Order No. X-20 which supplemented the Executive Order, defined the procedure under which rates and budgets would be approved, and emphasized that employers who were subject to several codes would, with certain exceptions, be assessed only for the support of one code authority -- that representing their principal line of business. To relieve members of industry operating under more than one code from multiple assessments. Administrative Order No. X-20 was supplemented by Administrative Orders No. X-36, No. X-78, No. X-106, No. X-131, and No. X-140.

X. BLUE EAGLE INSIGNIA.

The revised edition of the Model Code issued April 3, 1934, incorporated under the powers and duties of the code authority, Article VI, Section 7 (g), the following provision:

> "To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the trade/industry who have assented to, and are complying with this Code."

Some members of industry had been deprived of the right to display the Blue Eagle because they had not assented to the code for their particular industry, although they were complying with its provisions. To correct this injustice Office Memorandum No. 229 was issued June 9, 1934, as follows:

> "It is the policy of this Administration to encourage the display of Code Blue Eagle Insignia by all trade and industry members complying with the provisions of the Code or Codes of Fair Competition to which they are subject. Blue Eagles are being distributed to all employers operating under approved codes who have not been reported for violation; and, when issued, the Blue Eagle may be withdrawn only by N.R.A. for violation of code provisions.
>
> "No limitation such as assent to the code should be imposed upon the right of employers operating in conformity with the provisions of approved codes to receive and display Blue Eagle Insignia. Hereafter, Administrative approval will not be given to any code provision or any code authority by-law or regulation that seeks to impose such a condition."

XI. CLASSIFICATION OF CUSTOMERS.

An analysis of the first 500 approved codes shows that seventy-seven included some form of "classification of customers" provisions, indicating a differentiation among customers. Some members of industry used this classification as a basis for open price filing or for placing restrictions on discounts, prices or terms of sale. Other members used it as a means to divert products of the industry into specific trade channels.

The problem of classification of customers was referred to the N.R.A. Trade Practice Policy Board for its consideration and recommendations which were made as follows:

> "The problem of classification of customers has had very careful consideration. A number of the proposed classifications have been examined. The Committee has also had before it a number of proponents of customer classification. Some of these have been representatives of particular codes, others, persons who have confidence in the desirability and feasibility of customer classification. The most affirmative member of the latter group has declared that he had not yet seen any specific forms of customer classification which he believes would be satisfactory.

"Classification of customers by interested groups has been experimented with for a number of years. It has been tried in the lumber industry, and in other cases in which it has been studied by the Federal Trade Commission. A consideration of these studies, as well as the discussions mentioned above, lead to the conclusion that it is contrary to the public interest to entrust the serious responsibility of creating binding customer classifications to trades or industries concerned. Usually, if not in all cases, such plans appear to contain some design to restrict, destroy, or otherwise discriminate against certain individual concerns or classes of customers. Such plans are, further, in a large number of cases combined with compulsory resale price maintenance provisions, mandatory observation of classification by individual sellers, and uniform discount requirements, all tending in the direction of a rigidity of distribution structure and of prices.

"There is one type of customer classification work which the N.R.A. would be well advised to permit code authorities to carry on, as an educational activity. It would consist of determining and listing the trade channels open to members of the trade, pointing out the functions performed by various trade channels, and indicating developing trends and possible new channels of distribution. Such work, if conducted continuously by the code authority, should lead to a better awareness of market opportunities, lower costs of distribution, and quicker adaptation to the changing economic situation.

"In no case, however, should the provisions of a code or the work of a code authority be permitted to place restrictions on the freedom of an individual vender to choose such distribution channels as he believes will best serve his purposes. Nor should influence be brought to bear to bring about such a result. Nor should there be permitted any classification of types of customers which contains or suggests resale price maintenance provisions, uniform discount requirements, or other features tending in the direction of rigidifying channels of distribution, and prices.

"The above observations and the recommendations which follow are in line with the principles of open price filing set out in Office Memorandum 228 and, specifically, that part of Exhibit A--Open Price Filing--which states that price lists when filed 'shall completely and accurately conform ato and represent the individual pricing practices of said member'."

RECOMMENDATIONS

"It is recommended:

"1. That code provisions for classification of customers should go no further than to authorize code authorities to formulate and keep current classifications which include the following:

"(a) A statement of those types of customers to be found in the trade/industry;

"(b) Definitions and explanations of these several classes of customers in terms of their functions.

"2. Such classifications should

"(a) Include all known types of customers,

"(b) Expressly recognize the right of any members of the trade/industry to recognize such additional types as he may desire,

"(c) Expressly recognize the right of any member of the trade/industry to classify his own customers as he may desire.

"3. Such classification should in no case include or be supplemented by

"(a) Provisions contemplating the suppression or elimination of certain types of distributors or competitors or individual distributors or competitors;

"(b) Any reference to uniform prices, discounts or differentials to be used by members of the industry for the various classes of customers indicated;

"(c) Any requirement or suggestion designed to bring about the maintenance of resale prices by members of the trade/industry or their customers;

"4. Code provisions for classification of customers should specifically declare that it shall be a violation of the code for the code authority or members of the industry individually or collectively to require or suggest to any other member of the industry the differentials, prices, or discounts to be used or employed as between the various classes of customers indicated, or to suggest or require the inclusion of individual concerns in any indicated class."

The above recommendations were duly considered by the Administration, and led to the issuance of Office Memorandum No. 267 of July 20, 1934 ((Exhibit 21).

XII. ADVERTISING ALLOWANCES.

The practice of manufacturers in making advertising allowances to purchasers permitted secret rebates, sometimes in violation of code provisions against such rebates. NRA policy with respect to the question of prohibiting advertising allowances through the codes was not definitely developed until late, but finally was announced by Office Memorandum No. 326, of January 5, 1935, (Exhibit 22), as follows:

"Manufacturers or other vendors selling goods to distributors frequently find themselves desiring to purchase from their customers

an advertising or promotion service which their customers can render. In purchasing such services the vendors have become accustomed to make payment by 'allowing' a certain reduction from what would otherwise be the price. The payments thus made have become known as 'advertising allowances'.

Code provisions declaring the giving of advertising allowances an unfair practice would not change the basic facts that sellers must price their goods to buyers and that certain buyers have promotion services which they are desirous of selling for which those who sell to them are willing to pay. The remedy for such suspicion, secrecy, confusion, and misrepresentation as may be connected with advertising allowances, lies in:

(a) Clearly separating and thus establishing the distinct identities which are involved in giving advertising allowances.

(b) Causing that part of the advertising allowance which is actually a price reduction to appear in prices - reported prices, if the industry or trade has an open price plan.

(c) Causing that part of the advertising allowance which is actually a payment for advertising or promotion service to appear as such with definite description of the service for which it is given, and with such publicity, where publicity is practicable, that it is unlikely that the payment will be more than the competitive worth of the services involved.

Accordingly, it is N.R.A. policy that an industry desiring to regulate advertising allowances should not be permitted to do so by general prohibitions, by restrictions on the basis of products or types of distributors, or otherwise than in accordance with the following:

1. That no member of an industry or trade shall designate as an 'advertising allowance', 'promotion allowance' or similar term, any price reduction, discount, bonus, rebate, or other form of price allowance or concession, or any consideration for advertising or promotion services offered or given by him to any customer.

2. That no member of an industry or trade shall offer or give any consideration for advertising or promotion services to any customer except for definite and specific advertising or promotion services.

3. Agreements to purchase advertising services from customers shall be made in written contracts separate from sales contracts.

4. Such contracts shall specifically and completely set out the promotion services to be performed, together with the precise consideration to be paid therefor, the method of determining performance, and all other terms and conditions relating thereto.

5. Some arrangement for publicity may be made, where effective machinery therefor can be devised. In considering any arrangement

for publicity, care should be taken to avoid machinery so cumbersome that its cost will outweigh benefits to be gained.

The model provisions for advertising allowances which were to be incorporated in codes are then set forth.

XIII. LIQUIDATED DAMAGES PROVISIONS.

Prior to the issuance of Office Memorandum No. 331, January 29, 1935, (Exhibit 23), fifteen codes were approved which contained provisions for liquidated damages. This Memorandum express NRA policy as to such provisions and was the last expression of such policy, although the question subsequently received further consideration by the NRA Advisory Council, which made recommendations for revision.

XIV. PROVISION PROHIBITING DISMISSAL OF EMPLOYEES FOR REPORTING ALLEGED VIOLATIONS OF CODES.

It had been brought to the Administrator's attention that some employees were being dismissed because they were reporting code violations; also that many violations were not being report because the employees were in fear of being discharged if their employer learned that the employee had reported to the proper authority a violation of a code. To correct such dismissals and fears the President, by Executive Order No. 6711 of May 15, 1934, (Exhibit 24 established the following rule:

> "No employer subject to a code of fair competition approved under this title shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any code of fair competition approved under this title."

The above rule was thereafter used as a model provision for codes.

XV. HOMEWORK.

After the basic codes for the Garment Industries were approved it soon became apparent that the provisions in codes eliminating homework had caused severe hardships among those employed in such work. On the other hand it was recognized that homework offered a vicious type of unfair competition in many industries.

A committee was appointed to study this question, and to make recommendations to the Administrator as to regulations governing homework.

Office Memorandum of February 17, 1934 stated in part as follows:

> "Pending completion of the study and solution of the problem, it is suggested that homework provisions be very carefully weighed, and stayed

where hardships may result."

On the recommendations of the Commission, which had made a study of homework, the President issued Executive Order No.6711-A on May 15, 1934 (Exhibit 26), "Prescribing Rules and Regulations for the Interpretation and Application of Certain Labor Provisions of Codes of Fair Competition as They May Affect Certain Homeworkers." This Order stated in part as follows:

"1. A person may be permitted to engage in homework at the same wage rate of wages as is paid for the same type of work performed in the factory or other regular place of business if a certificate is obtained from the State authority or other officer designated by the United States Department of Labor, such certificate to be granted in accordance with the Department of Labor, provided:

(a) Such person is physically incapacitated for work in a factory or other regular place of business and is free from any contagious disease; or

(b) Such person is unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or an invalid and both such persons are free from any contagious disease.

2. Any employer engaging such a person shall keep such certificate on file and shall file with the Code Authority for the trade or industry or subdivision thereof concerned the name and address of each worker so certified.

This Order shall become effective immediately and shall be binding upon all trades, industries or subdivision thereof subject to Codes of Fair Competition in which homework is prohibited, * * *; provided, however, that this Order shall not apply to or affect Codes of Fair Competition heretofore or hereafter approved for food or allied products trades, industries or subdivisions thereof, which contain provisions prohibiting the manufacture and/or processing of food products in homes."

XVI. NON-WAIVER OF CONSTITUTIONAL RIGHTS.

Article VII of the Code of Fair Competition for the Daily Newspaper Publishing Business contained the following provision:

"Those submitting this Code recognize that pursuant to Section 10 (b) of the Act the President

> may, from time to time, cancel or modify any order approving this Code, but insubmitting or subscribing to this Code, the publishers do not thereby consent to any modification thereof, except as each may thereto subsequently agree, nor do they thereby waive any constitutional rights, or consent to the imposition of any requirements that might restrict or interfere with the constitutional guarantee of the freedom of the press."

The President approved the Code with the above Article included with the following comment (Paragraph 3 of the Executive Order of Approval):

> "Insofar as Article VII is not required by the Act, it is pure surplusage. While it has no meaning it is permitted to stand merely because it has been requested and because it could have no such legal effect as would bar its inclusion. Of course a man does not consent to what he does not consent to. But if the President should find it necessary to modify this Code, the circumstance that the modification was not consented to would not affect whatever obligations the non-consentor would have under Section 3 (d) of the National Industrial Recovery Act.
>
> Of course, also, nobody waives any constitutional rights by assenting to a Code. The recitation of the freedom of the press clause in the Code has no more place here than would the recitation of the whole Constitution or of the Ten Commandments. The freedom guaranteed by the Constitution is freedom of expression and that will be scrupulously respected --but it is not freedom to work children, or do business in a fire trap or violate the laws against obscenity, libel and lewdness."

Some writers and newspapers continued to contend that the "non-waiver of constitutional rights" clause should have been included in all codes. Many of the early codes as proposed did contain similar clauses, but these were deleted in every instance before the code was approved.

Evidently with the purpose of preventing further criticism the President issued Executive Order No. 6949, January 22, 1935 (Exhibit 25), which read in part as follows:

> "(1) It is understood that neither the Government nor any member of industry waives, or can properly insist that the other has waived, any constitutional right pertaining to the Government or to any individual by approving, assent-

ing to, or cooperating under a Code of Fair Competition.

"(3) The approval orders of all such codes heretofore approved are hereby modified to the extent necessary to make this Order a condition thereof, and this Order shall operate as a condition of the approval of any such code hereafter approved."

XVII. POSTING PROVISIONS

Executive Order 6599-B, February 3, 1934, delegated authority to the Administrator of NRA to prescribe rules and regulations requiring persons subject to codes to post or display the terms and provisions of said codes, or otherwise bring such terms and provisions to the attention of any and all interested persons, including employees. The Administrator was further authorized to take such steps as he might deem advisable to effectuate such rules and regulations prescribed by him.

Administrative Order X-6, February 12, 1934, prescribed rules and regulations governing the posting of labor provisions of codes as follows: That every person subject to any code was to register, within thirty days of the order, the effective date of the code, or the date upon which he became subject, whichever was latest, the full name of his enterprise, together with a statement of the number of shops, establishments or separate units thereof and their location, with the code authority of the trade or industry of which he was a member. Upon registration, or as soon thereafter as was possible, each such person was to be furnished with official copies of provisions of the code to which he was subject relating to hours of labor, rates of pay and other conditions of employment, such copies to be kept conspicuously posted at all times by such person in each shop, establishment or separate unit of his enterprise to the extent necessary to make them freely accessible to all employees. The employer was also to secure from the code authority and to post alongside the copy of code provisions a certified copy of any exemption, exception or modification permitting him to pay lower wages or work his employees longer hours or establish conditions of employment less favorable to his employees then those prescribed by the subject code. No employer was to display incorrect copies of code provisions or exemptions; he was to comply with any code provisions relating to posting.

Administrative Order X-7 of February 28, 1934, superseded Administrative Order X-6 concerning regulations governing the posting of labor provisions. The later order made it incumbent upon the employer to apply to his code authority or code authorities for official copies of labor provisions within forty-five days of the date of the order, the effective date of the code or the date upon which the applicant became subject to the code, whichever was latest. In addition, the Administrator's power to remove the Blue Eagle for failure to comply with those regulations was set forth.

Administrative Order X-82, September 1, 1934, added to the regulations governing posting of labor provisions the proviso that official copies, in addition to containing provisions of codes relating to hours of labor, rates of pay and other conditions of employment were to contain such conditions, orders, interpretations, explanations or statements issued by the President or the Administrator as part or in connection with any order approving a code or any amendment thereto relating to labor provisions; other interpretations, orders and explanations, all to such extent as NRA might deem advisable to effectuate the purposes of those rules and regulations in the case of each code.

CHAPTER VI

RECEPTION BY INDUSTRY

Immediately after the passage of the Act the hopes of industry were seemingly lifted by the issuance of the following statement in NRA Bulletin No. 2:

> "It is not the function of the National Recovery Administration to prescribe what shall be in codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself."

Many members of industry interpreted the provisions of the Act to mean that they would be relieved from the anti-trust laws and from the destructive competitive practices which were ruining their markets, and anticipated that there would be official enforcement of price control measures.

When the Cotton Textile Code (No. 1) was approved their hopes were raised further by the clauses providing for indirect control of production through limitation of machine hours. Anticipations of relief from destructive pricing practices seemed well founded when the Shipbuilding and Ship-repairing Code (No. 2) was approved with a prohibition against selling below cost, the Electrical Manufacturing Code (No. 4) with a fully developed open price reporting system, the Coat and Suit Code (No. 5) with a grant of power to the Code Authority to examine books and records of members of that industry, the Iron and Steel Code (No. 11) with price reporting, merchandising, and minimum price provisions, and the Lumber and Timber Code (No. 9) with a system of price fixing and provisions for control and allocation of production. The result of the approval of such provisions as these was that many fantastic provisions, notably those of a price fixing character, were included in the codes submitted to NRA.

Prior to the issuance of the Model Code of November 6, 1933, ninety-nine codes had been approved, including those for nine of the ten major industries. The Code for the Construction Industry, classified as one of ten major industries, had not been approved. The Model Code did not receive a hearty reception from certain members of the industries whose codes had not been approved, because the codes that had received first consideration and had been approved prior to November 6, 1933, contained many provisions which were inconsistent with the model. Members of industry frequently expressed the opinion that the NRA was reversing its previous policy and in advising the use of the Model Code was trying to place them in a straight jacket. Almost every industry had by November 6, 1933 drafted and submitted codes to NRA, and therefore the Model Code was not extensively availed of in the drafting process. However, it was used extensively by NRA and industry in modifying the proposed drafts in order to obtain approval.

The numerous cases referred to the NRA Advisory Council and the various Policy Boards indicate that much time, labor and expense would have been saved if the NRA had issued a Model Code before many public hearings on proposed codes were held. If this had been done the Administra-

tion would not have been subject to the criticism previously referred to that provisions were permitted in earlier approved codes which were not embraced in the Model Code of November 6th and the subsequent issue, and were denied to industries whose codes had not already been approved.

However, experience was a valuable guide, and if a model code had been issued before many public hearings were held, numerous amendments of it to express the lessons learned through experience probably would have been necessary.

CHAPTER VII

CONCLUSIONS AND FINDINGS

The preface of the Model Code of November 6, 1933, stated in part as follows:

> "Except as to those provisions which are required to be included in all codes by the National Industrial Recovery Act (which provisions are clearly indicated herein), none of the suggestions embodied in this draft are mandatory."

This issue of the Model Code was widely distributed to industry, and some members of industry were misled by the above quoted statement and did not follow the wording of the provisions verbatim in drafting their codes; however, before their codes were approved they realized time would have been saved for all parties concerned if the preface had stated that those provisions of the Model Code which were incorporated in codes should be verbatim.

Some members of industry expressed the opinion that if it was the policy of the Administration that the wording of the model provisions should be followed verbatim the preface should have so indicated; also that the preface should have specified the provisions which were fundamental, those most highly desirable, and those optional.

Many of the provisions included in approved codes varied from the model provisions of the Model Code, from which it would appear that the Model Code was too narrow, especially the chapter pertaining to trade practices.

One of the principal advantages of the Model Code was that it incorporated policies which had not heretofore been expressed by the Administration, and for this reason it was a very useful guide for the members of NRA connected with code making. Some of the officials of NRA immediately adopted the Model Code as their Bible in code making, others took the preface at its face value and declined to follow it, but they fell into line when they realized that codes moved forward to approval more rapidly when their contained provisions were patterned after those of the Model Code.

However, it must be observed that even after changes in NRA policy between November, 1933 and April, 1934 were expressed in the revised Model Code of April 3, 1934, policy announcements affected model code provisions. Therefore, code provisions negotiated with model provisions as a guide sometimes had to be reopened and this undoubtedly brought about some measure of exasperation on the part of code sponsoring committees and members of industry and created criticism of NRA.

From the study of the development of the provisions of the Model Code it is apparent that:

1. Much time would have been saved and many mistakes avoided had NRA adopted an official Model Code much earlier in the code-making period;

2. NRA personnel had only Title I of NIRA and NRA Bulletin No. 2 for use as guides in the early days of code drafting.

3. A large number of approved codes appear to have been too hastily drafted.

4. "The Model Code for Self-Governing Industries," a document issued by the National Association of Manufacturers under date of May 31, 1933, the President's Reemployment Agreement, as well as the earlier approved Codes, were used by many industries as a basis for drafting Codes which they proposed to submit for approval, insisting that similar provisions be included in their Codes.

5. The delay in the establishment of a Policy Board and the formulation of policy handicapped the development of an official Model Code and caused much uncertainty to exist in the minds, not only of NRA personnel but of members of industry as to just what provisions would be approved.

Recommendation

In the event that any new legislation is enacted which contemplates the formulation and adoption of codes of fair competition to govern industry, a policy board should be created with a personnel consisting of representatives of government, industry, labor, and consumers, to study the legislation thoroughly and formulate policy for its administration, including the adoption of a model code which might be used as a guide in drafting proposed codes under the legislation.

APPENDIX I

This study is presented in a narrative form and has been treated from an historical point of view. The events which culminated in the passage of the National Industrial Recovery Act, the early problems which were presented relative to code making, the needs for and the policies involved in the formulation of the Model Code of November 6, 1933, subsequent issues of the Model Code and amendments thereto, and its reception by industry have been treated in chronological order. The so-called basic code, promulgated under Administrative Order No. X-61 is not discussed because it is the subject of separate study. (Work Materials No. 33). An attempt has been made to analyze the benefits derived by the use of the Model Code, as well as an analysis of its shortcomings, and to present recommendations in event any future legislation, which would involve code making, is passed by Congress.

The procedure followed in the development of this study is as follows: First, a tentative outline for the subject was prepared. Second, all available information germane to the subject was obtained from various files of the NRA. In some instances, where information relative to policy involved in the drafting of some model provision had not been recorded it was necessary to confer with the individuals who had aided in drafting such provisions. Valuable information, in most cases, was obtained by such conferences, and was of aid in fully developing the tentative outline. Third, a preliminary draft of the study was written and submitted. Fourth, with a few minor changes, the study was submitted in its present form. The author is of the opinion that no further research is necessary for this subject. However, if further work is to be carried on, it is recommended the study of "The Basic Code (Administrative Order No. X-61)" (Work Materials No. 33) be correlated with this study.

APPENDIX II

May 31, 1933.

FOREWORD

In the preparation of this "CODE" liberal use has been made of materials and assistance from the Bureau of Foreign & Domestic Commerce of the Department of Commerce.

I also acknowledge the cooperation in the preparation of this pamphlet of John C. Gall, Associate Counsel, and Noel Sargent, Economist, both of the National Association of Manufacturers.

A. P. Haake

SHEET # 1 of a series
on the "INDUSTRIAL RECOVERY BILL"

Chart 1 : The Bill on a whole.
" 2 : The Trade Association portion.
(Just what can a Trade Association do at once?).
" 3 : Trade Associations in the U. S.
" 4 : The Public Works part of the Bill.

THE NATIONAL INDUSTRIAL RECOVERY ACT"

Extra single copies, free, from the National Association of Manufacturers, 11 W. 42nd St., New York City, or Union Trust Bldg., Washington, DC

Prepared by the above confederation of over 400 industrial associations in cooperation with the Bureau of Foreign & Domestic Commerce, U.S.Department of Commerce, Wash.,D.C.

This is Senate Bill No. 1712; and House of Representatives Bill No. 5664.
73rd Congress; 1st Session.

On May 22nd the HOUSE Committee on Ways & Means recommended that funds necessary for the financing of the public works program be secured chiefly by:

1. Increasing normal income tax rates to 6% and 10% (from 4-8).
2. Application of same rates to income from corporate dividends (now subject only to surtaxes).
3. Increase of one cent gasoline refiners' tax to 1½¢.
4. Continuation of present special excise taxes, from 1934 to 1936.

(See House Bill #5786)

May 17th : Introduced by Senator R. F. Wagner, of New York.
" 17-20 : Public hearings; before House Ways & Means Committee
" 23rd : Report of above Committee as to tax-raising recommendations; together with the published hearings, of 306 pages.
" 23- ? : Public hearings; before the U.S.Senate Finance Committee.

When the Senate Committee's report on its hearings is made, there may then be a re-drafting of the Bill before it is finally submitted for vote to both Houses of the United States Congress.

If passed by Congress, it will then be submitted to the President, whose own thoughts upon the original Bill are given, in part, below -- extracts from his May 17th Message to the Congress.

THE PRESIDENT OF THE UNITED STATES

One-half of the Bill provides for:

(Part I is pages 1-11)

MOBILIZATION OF INDUSTRY INTO TRADE ASSOCIATIONS

By granting -- *FOR 2 YEARS:*
almost unlimited Federal power, if necessary, (if each branch of industry does not voluntarily do so) to bring about controlled production, wages, hours of labor, prevent unfair competition, etc.

The other half provides for:

(Part II is pages 11-21)

A HUGE $ 3,300,000,000 PROGRAM OF PUBLIC-WORKS CONSTRUCTION

By granting
$ 1.1 Billions of Government funds, to be obtained from sale of bonds, for a PROGRAM of public works, clearance of city slums, public highways, public buildings, development of natural resources, etc.

PRESIDENT ROOSEVELT'S OWN DESCRIPTION OF PARTS OF THE "WAGNER" BILL

" . . a great cooperative movement throughout all industry in order to:
1. Obtain wide re-employment;
2. Shorten the working week;
3. Pay a decent wage for the shorter week;
4. Prevent unfair competition, and
5. Disastrous over-production.

"Employers cannot do this singly, or even in organized groups, because such action increases cost and thus permits cut-throat underselling by selfish competitors unwilling to join in such public-spirited endeavor. . . .

"One of the great restrictions on such cooperative efforts up to this time has been our anti-trust laws. . . The public interest will be served if, with the authority and under the guidance of Government, private industries are permitted to make agreements and codes insuring fair competition. However, it is necessary, if we thus limit the operation of anti-trust laws to their original purpose, to provide a vigorous licensing power in order to meet rare cases of non-cooperation and abuse.

"Such a safeguard is indispensable."

" . . to start a large program of direct employment. A careful survey convinces me that approximately $ 3,300,000,000 can be invested in useful and necessary public construction, and at the same time put the largest possible number of people to work.

"Provision should be made to permit States, counties, and municipalities to undertake useful public works; subject, however, to the most effective possible means of eliminating favoritism and wasteful expenditures on unwarranted and uneconomic projects...

"At least $ 220,000,000 of additional revenue will be required in service (interest and sinking funds) the contemplated borrowings of the Government.

"We must, by prompt and vigorous action, override unnecessary obstructions which in the past have delayed the starting of public works programs.

"This can be accomplished by simple and direct procedure."

THE 9 SECTIONS OF PART I

Section 1. "Declaration of Policy"
" 2. "Administrative Agencies"
" 3. "CODES of Fair Competition"
" 4. "Agreements and Licenses"
" 5. "Exemption from Anti-trust Laws"
" 6. "Limitations upon Application of Title"
" 7. Every CODE Must Contain Certain Labor Barring Conditions.
" 8. "Application of Agricultural Adjustment Act".
" 9. "Rules and Regulations"

The U. S. Department of Commerce has a file on each of the nation's 10,000 trade-industrial associations:-

2,300 - National
8,000 - State
Etc.

THE 9 SECTIONS OF PART II

Section 201. "Federal Emergency Administration of Public Works"
" 202. "Preparation of the Program"
" 203. "Financing of the Projects"
" 204. "Construction Funds to the States"
" 205. "Thirty-Hour Week (so far as practical) and wages sufficient for 'a standard of living in decency and comfort'."
" 206. "Rules and Regulations"
" 207. "Issue of Securities and Sinking Fund".
" 208. "Unemployment and Relief Tax"
" 209. "Appropriation"
" 201-4. "Miscellaneous Sections"

Charts by O. Judkins.

9810

The U. S. Department of Commerce has a file on each of the nation's 16,000 trade-industrial associations -

2,300 - National
2,800 - State
Etc.

CHART II

WHAT CAN A TRADE ASSOCIATION DO AT ONCE TO PREPARE FOR THE BILL?

THE NATIONAL INDUSTRIAL RECOVERY ACT"

The National Industrial Recovery Bill, introduced on May 17 and passed by the House on the 26, endeavors to provide for a balanced national economy through "self-regulation of industry under Government sanction". The medium is to be, largely, the trade association.

It is estimated that some $ 20,000,000 was expended in 1929 by the over 5,000 national and state commercial organizations in the United States.

There are almost 1,000 trade associations of a strictly interstate manufacturing character. The Bill applies directly to these. Some of them have long carried on successful work of a complete statistical nature and have been active in restraining unfair competition within their industries.

Such associations as these should be able to quickly prepare the sort of basic Codes which the Industry Recovery Act provides for.

With the trade association machinery these groups have, and being already supplied with much of the statistical data needed, they can promptly obtain the industry's composite thought as to such items as:

1. Maximum hours of labor.
2. Minimum wages (by major types of labor; and number employed, normally and now; etc.)
3. Production statistics (including capacity data plus factory and total cost of items in various price brackets).
4. The most glaring "unfair competition" practices within the industry.

Such information should be quickly obtained through the use of questionnaires, as well as regional and national conferences.

The Administration to be set up in Washington if the proposed Bill becomes a law, will be chiefly concerned with the above major points. If a trade association is truly representative of its industry, or industry subdivision, the Secretary might well now arrange the following:

YOUR INDUSTRY'S TRADE ASSOCIATION

(if the sole one, or the most representative one, in its field.)

ITS SECRETARY

Informs himself fully on the Bill.
Plans to make his organization stronger and of utmost helpfulness to both members and non-members. (Never before has he had the golden opportunities for unlimited assistance to his industry which the Wagner-Doughton Bill presents)

Secretary and President arrange for an immediate meeting of the BOARD OF DIRECTORS

Full, frank discussion.
Means decided upon to make the Association more representative; to change membership qualifications if necessary; to revise the constitution, etc.

Appointment at once of a "CODE" COMMITTEE; and

best means decided upon to quickly find the true consensus of opinion, of both employers and employees, as to:

the 4 major items named on this Chart and some or all of the other items named in Article VII ("Statistics") in Dr. Haake's MODEL CODE, issued today by the National Assn. of Manufacturers. (Send for free copy.)

Meeting of your Board of Directors.

Explanation that the Constitution and By-laws must be revised, if necessary, to provide for the set-up of a CODE OF FAIR COMPETITION, and some means for having centralized representation (perhaps one or three persons) to act for the trade association in direct dealings with the Administration at Washington.

The Secretary presents to the Board the best possible summary of the present status and future possibilities of the Wagner-Doughton Bill as it affects his and allied industries.

A Committee might then be arranged for and authorized to work upon the needed code. The Secretary might well have ready a tentative outline of a Code.
(Send for a copy of the helpful N.A.M. booklet issued today: "A MODEL CODE FOR SELF-GOVERNING INDUSTRIES".)

Questionnaires could then be prepared to send to all members of the industry, within and without the association, in an endeavor to learn their exact present views as to the four major items above-mentioned.

Your aim will then be to compile as quickly as possible a correct statistical picture of your industry as to such data.

All of these constructive efforts and results will bind your members closer to the Association, bring in new members - - - perhaps even have some immediate effect as to hours wages, lessening destructive trade practices, bringing the "recalcitrant minority" into line, etc.

Why wait till the Bill progresses further through Congress before endeavoring to have a correct, present-moment report prepared - - on at least the above few (4) lines - -, ready for a probably-soon real need?

Chart by
E.R. Dewey
C. Jo[illegible]ine

E.E.

9810

INTRODUCTION

Under the National Industrial Recovery Bill, now before Congress but not yet enacted into law, a great many groups of manufacturing and distributing establishments will immediately want to set up "Codes" and the necessary enforcement machinery to comply with the provisions of the law. Many of these, realizing something of the magnitude and urgent need for prompt organization, are already taking steps in that direction.

This is a preliminary outline. It is designed to aid industrial executives adapt trade associations to the immediate requirements under the National Industrial Recovery Act.* A subsequent outline will be issued to meet any essential changes which may be made in the bill. (Although this outline touches upon all major requirements of a "CODE OF FAIR COMPETITION," the advice of legal counsel is urgently recommended properly to adapt the general suggestions herein given to the detailed requirements of each individual case.)

It should be borne in mind that, while the immediate declared objective is to increase employment and to raise purchasing power through increased and wider spread wages, as well as to encourage improved conditions of employment, the fundamental and real effect of the bill is not revealed in its emergency character. Its eventual consequences are designed by its authors to be a better-balanced national economy, built on the premise that the welfare of all the people is a necessary condition to the welfare of the individual; in contrast to the theory of Laissez-Faire, which exalts the individual, rather than the group of which he is a part.

A bloodless, but nevertheless far-reaching, revolution is dethroning the unrestricted individual and making the group our economic and social unit. Whether or not this is a permanent change, it must be recognized in the individual points of view with which the proposed new organization and direction of industry is approached.

The first step for each individual firm is to recognize the necessity of becoming "group-minded" and accept some limitation of individual rights for the sake of promised enlarged practical advantage.

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* If any manufacturing group has no trade association, write to the N.A.M., Union Trust Bldg., Washington, D. C., for a booklet on this subject issued May 23, 1933.

The second step for the individual members of an industry is to make sure that their trade association is qualified to function as an effective agency in the promotion of self-government. The alternative is direct government supervision and control.

An effective trade organization must have the direct participation of the major executives of an industry. The major problems of business call for the best brains, the leadership, and wholehearted "followership" in an industry.

The association executive, commonly known as "Secretary," faces a new and far more exacting responsibility than ever before. No trade association executive may safely rely on what have sometimes been considered the conventional activities of a secretary. He must understand, coordinate, and direct activities in costs, fact-finding and fact-handling, production, marketing, and administrative economics. He must help his industry, which is but part of a far greater whole, to fit itself properly into the entire picture.

The first step for the trade association (as distinct from the individual member of the industry) is the setting up of a "Code," as provided for under the Act. It may even be necessary to alter the organization, its constitution and by-laws, to enable it to function properly under the Act.

No one Code can fit all industries, but there are sufficient features in common to justify offering what may be termed a "Preliminary Model Code." This will have to be adapted to meet particular situations, as well as the rules, regulations and requirements which those charged with the administration of the Act may subsequently stipulate.

The Code which follows is designed for an industry made up of a number of closely related divisions which compete with each other or otherwise come into such intimate contact with each other in common markets that a common Code and coordination is essential to them all.

The Lumber Industry, whose proposed form of organization is shown in connection with this Code, is an example of such an inclusive industry. The Furniture Industry provides another example, with its sub-groups--manufacturers of upholstery, case goods, tables, chairs, bedding, reed and fibre goods, etc.

For such industries, the "Model Code" may be adopted practically as outlined.

However, in some industries having no internal competition between divisions of the trade, the "Model Code" can be modified by merging the Emergency National Committee and the Divisional Executive Committee into one board with consequent concentration of authorities and responsibilities.

Later development will undoubtedly require a merging of many associations in related fields, and, as far as is practical, those mergings should be anticipated by an immediate organization of the industry as a whole, as has been done so effectively by the Lumber Industry.

Details as to the actual calling of meetings, submittal of the Code to the industry, and other matters preliminary to the actual submittal of the code for approval by the President, are shown graphically in Chart II.

NOTES

For the adaptation of this Code to your own Industry:*

Arrangement of your Code

You may find it advisable to group the provisions with respect to organization, duties, and powers in one section; and to combine all of the regulations which are to be enforced in a section by themselves, instead of separating the Industry Regulations and Division Regulations as has been done in this Code.

Sources of Information

We suggest you avail yourself of specific suggestions and other assistance provided by the following:

BUREAU OF FOREIGN & DOMESTIC COMMERCE
U. S. Dept. of Commerce, Washington, D. C.

NATIONAL ASSOCIATION OF MANUFACTURERS
Union Trust Bldg., Washington, D. C.,or
11 West 42nd Street, New York, N. Y.

CHAMBER OF COMMERCE OF THE UNITED STATES
1615 H. Street, N. W., Washington, D. C.

AMERICAN TRADE ASSOCIATION EXECUTIVES
Room 1919, 666 Lake Shore Drive, Chicago, Ill., or
Hotel Statler, Detroit, Mich., or
Room 1800, 386 Fourth Ave., New Yovk City.

*WARNING: There may be attempts to exploit lack of knowledge on the part of industries or groups which have no trade association. Protect yourself by submitting proposals to any of the above sources.
The spirit of this National-Recovery measure is utterly opposed to any semblance of "racketeering."

A Suggested Form of Outline
for a
"CODE OF FAIR COMPETITION"

(Adapted from the Code of the National
Lumber Manufacturers Association)

Article I. PURPOSE

This Code is set up for the purpose of increasing employment, establishing fair and adequate wages, effecting necessary reduction of hours, improving standards of labor, and eliminating unfair trade practices (etc.), to the end of rehabilitating the..... industry and enabling it to do its part toward establishing that balance of industries which is necessary to the restoration and maintenance of the highest practical degree of public welfare.

It is the declared purpose of the.....industry and adherents to this Code to bring, insofar as may be practicable, the rates of wages paid within the.....industry to such levels as are necessary for the creation and maintenance of the highest practicable standard of living; to restore the income of enterprises within the industry to levels which will make possible the payment of such wages and avoid the further depletion and destruction of capital assets; and from time to time to revise the rates of wages in such manner as will currently reflect the equitable adjustment to variations in the cost of living.

Article II. PARTICIPATION

Participation in this Code, and any subsequent revision of or addition to the Code, shall be extended to any person, partnership or corporation in the.....industry who accepts his share of the cost and responsibility, as well as the benefit, of such participation by becoming a member of the..... association or any affiliated organization. No initiation or entrance fees shall be charged, but there shall be dues levied on the following basis: (Insert here what this basis should be). Subscription fees, or other assessments, if any, shall be levied on the same basis, provided not less than.....per cent of the membership approve the amount of such assessments.

Article III. DIVISIONS OF THE INDUSTRY

A. Powers

For the purpose of the administration of this code the..... .....industry or trade shall be divided into divisions as set forth below. Each division shall designate or establish its own administrative agency or agencies. Each such division shall be independent and self-governing in respect of all conditions and problems relating exclusively to the said division. Proposals in respect of matters

affecting more than one division may be initiated by any division, and shall be submitted for consideration to the Emergency National Committee of the.....industry, hereinafter described, and its determination shall be binding upon said division and all other divisions affected thereby.

B . Names of Divisions

Divisions are hereby established as follows: (Insert here the name of each division of your industry).

(NOTE: The following divisions were established by the Lumber Industry. Their names are printed here through the courtesy of Dr. Wilson Compton of the National Lumber Manufacturers Association.

Cypress Division
Hardwood Division
Northern Hemlock Division
Northern Pine Division
Northeastern Pine Softwood Division
Redwood Division
Southern Pine Division
West Coast Lumber Division
Western Pine Division

Other divisions of lumber, and of manufacturers or producers of lumber and timber products, may be established upon application of any such group, subject to the approval of the Emergency National Committee hereinafter described; such divisions to have representation on the Emergency National Committee of the Lumber Industry.)

C. Executive Committee

Each of the above divisions, and any others which may subsequently be formed within the.....industry, shall set up an Executive Committee for the purpose of administering the provisions of the Code, to secure adherence thereto, to hear and adjust complaints, to consider proposals for amendments thereof and exceptions thereto (and such other provisions as you may wish to include), and otherwise to carry out within the division the purposes of the National Industrial Recovery Act as set forth in this Code.

If a division, as named above, does not concur in the submittal of this Code; or if, at any time thereafter, a division fails to perform its obligations as provided hereunder, the Emergency National Committee of the.....industry, hereinafter described, is hereby empowered to adopt a Code for the division and may provide for the administration of that Code as if said Emergency National Committee were the Executive of the division concerned.

Article IV. DIVISION REGULATIONS

A. Labor Code

Each of the above divisions, and any other which may subsequently be formed, shall promptly undertake the formulation of a labor code.

The labor code established by the said division shall, upon approval of the Emergency National Committee of the.....industry, be binding upon all producers of products in such division. The labor code of each division shall contain the following provisions:

(a) Employees in the.....industry shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organizations or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.*

(b) No employee in the.....industry, and no one seeking employment therein, shall be required as a condition of employment to join any company union or to refrain from joining a labor organization of his own choosing.*

(c) Employers of labor in the.....industry agree to comply with the maximum hours of labor, minimum rates of pay, and other working conditions approved or prescribed by the President.*

And, in addition,

(d) A classification of kinds of labor in the..... industry.

(e) Maximum hours for each class of labor, and exceptions.

(f) Minimum wage for each class of labor, and exceptions.
(Which may take into consideration geographical location of plants and varying skill of employees, etc.)

(g) Other provisions in regard to working conditions, etc.

B. Production Codes

Each of the above divisions, and any others which may subsequently be formed, shall promptly undertake the formulation of a production code. This code shall operate within the limits of the production quota of the division as determined by the Emergency National Committee, and on such equitable basis, and for such period,

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* See Section 7 of the Act. The above language is mandatory under the bill as passed by the House.

as it shall determine, and shall allot a maximum* production to each producer of.....(product).....in operation, or which proposes to operate, within the said division.

Production of.....(product).....in excess of his approved allotment,* during any period by any producer of..(product)... after having received from said established division a production allotment on the basis approved by the Emergency National Committee, is an unfair method of competition. (Note: The determination of production allotments is exceedingly important; these may be based on production capacity, or on sales, on a combination of both or in other ways.)

C. Cost Codes

Each of the above divisions, and any others which may subsequently be formed, shall proceed at once to provide for standard methods of costing which shall be used by all manufacturers within that division for the purposes of this section of the code.

It shall be an unfair method of competition for any such manufacturer to sell below reasonable cost. What is statistically known as the "mode",** may be used as a reasonable cost, but must be so approved. (Note: It might instead be provided that no producer shall sell below his own cost production.)

Dropped lines or surplus stocks, sometimes designated as "close-outs," or inventories which must be converted into cash to meet immediate needs, may be sold at such prices as are necessary to move the merchandise into buyers' hands. However, all such stocks must first be reported to the Executive Committee of the division, and be disposed of subject to the approval of that committee.

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* If the establishment of an arbitrary maximum is not practicable, the industry may succeed in setting a "norm" of production for each division and unit thereof, departure from the "norm" being penalized so as to discourage circumventing tactics without discouraging individual initiative. Thus, it might be provided that an assessment of 2% be levied on the first 25% over the norm, 5% on the next 25% and 10% on all over; receipts to go into a common fund for the benefit of the industry.

**The "mode"* is that figure in an array of figures, according to their relative importance, which occurs with the greatest frequency. The "average" of the figures, of the "median" (Middle item) might be used.

Article V. EMERGENCY NATIONAL COMMITTEE

A. Representation

There shall be an Emergency National Committee of the..... industry to consist of a representative, or representatives, of each division, selected by the said division, representatives of the industry at large to be selected by divisional members, and representatives of other groups which may be entitled to representation, for the present named as follows:.....(Here insert names of divisions and groups, and number of representatives.)

B. Powers

This Emergency National Committee shall be the general planning and coordinating agency for the industry. Its members selected by established divisions shall be empowered by the said divisions to act for them conclusively in respect to all matters before the committee for consideration and within its jurisdiction. The committee shall have powers and duties as provided herein, and in addition thereto it shall

(a) from time to time require such reports from divisions as in its judgment may be necessary to advise it adequately of the administration and enforcement of the provisions of this Code;

(b) upon complaint of interested parties, or upon its own initiative, make such inquiry and investigation into the operation of the Code as may be necessary; and

(c) make rules and regulations necessary for the administration and enforcement of this code. The Committee may delegate any of its authority to the National Control Committee hereinafter provided, and may designate such agents as it shall determine.

The Emergency National Committee of the..... industry in cooperation with, and subject to, the approval of the properly designated representative of the President under the National Industrial Recovery Act, shall determine, and from time to time revise, an estimate of expected.....(product).....consumption; and based thereon, it shall establish, and from time to time revise, an equitable production quota of the.....industry and for each division thereof.

Article VI. INDUSTRY REGULATIONS

(The same for all Divisions; as distinct from Division Regulations which may differ from Division to division.)

A. Marketing Codes

The Emergency National Committee may establish a Marketing Code with provisions with respect to:

(a) group selling;
(b) classification of outlets or purchasers and recognition of standard and economically justifiable price differentials among them;
(c) division of consuming territory into market areas, providing for plants best equipped to serve particular markets, to concentrate sales efforts in such districts;
(d) adoption of uniform grading of products;
(e) simplification and standardization of products;
(f) cooperative advertising for the industry;
(g) collection and interchange of credit information;
(h) cooperative administration of insolvent debtors;
(i) and/or other aspects of marketing.

B. Trade Practice Rules

The Emergency National Committee shall hold a trade practice conference at its earliest convenience to establish rules of fair trade practice for the entire industry. (If satisfactory rules of fair trade practice already exist, this section can ratify or adapt such in lieu of holding a new conference.)

(NOTE: The following list indicates some of the practices which have been covered by rules in trade practice conferences:

Price discrimination
Commercial bribery
Misrepresentation
Rebates
Terms of sale
False invoicing
Freight absorption
Piracy of design
Dumping
Misbranding
Free goods
Interference with contracts)

The Emergency National Committee may authorize any one division to adopt fair trade practice rules relating to the practices peculiar to that division. .....

Article VII STATISTICS*.

In order to provide data necessary for the administration of the National Industrial Recovery Act, the members of the..... Industry shall furnish, and the Emergency National Committee shall gather, statistical information from all the members of the industry.

* NOTE: Such data may well include; (a) capacity; (b) production, orders, and shipments during the month; (c) unfilled orders and inventories (raw and finished) on hand at the end of the month; (d) number of persons employed, wage rates, earnings, and hours worked; (e) accounts receivable at the end of month; (f) price, costs; (g) and other items at the option of the industry. In many industries, producers may prefer to give such data to an independent accountant or expert employed by the committee or association. The firm of Ernst and Ernst will act as general advisers to the National Association of Manufacturers in proposing cost systems, methods of compiling and using statistical data, etc.

to effectuate within the .....industry or within any Division thereof the purpose of the National Industrial Recovery Act as administered.

4. Amendment to this Code may be proposed by any Established Division to the Emergency National Committee or may be initiated by it, and when approved by the President shall be effective.

5. Violation by any producer of .....industry products of any provisions of this Code, or of any approved rule issued thereunder, is an unfair method of competition.

6. In order to avoid undue delay in making effective throughout the.....industry this Code of Fair Competition, the following provisions are adopted, and other provisions of the Code in conflict therewith, are suspended until such time as the Emergency National Committee shall determine that the purposes of the Article have been accomplished:

a. Each Established Division shall submit as promptly as possible to the Emergency National Committee, a complete Division code in conformity with the general provisions of this Code. Such Divisional Code, if found substantially to promote the purposes of the National Code, shall be accepted provisionally by the Emergency National Committee and its immediate enforcement authorized. The Emergency National Committee shall thereupon proceed as rapidly as practicable to make such adjustments of and coordination between the provisions in respect of hours, wages, production and costs* of several divisional codes as may be necessary to bring them into conformity with the provisions of the National Code by:

    1. Consultation and negotiation between the Divisions affected.
    2. By its own findings after full consideration of all factors involved.

b. If any Division fails to submit within a reasonable time code provisions as provided in sub-section (a) of this Article, and if in the judgment of the Emergency National Committee such failure is unduly delaying the effective operation of this Code, the said Committee is authorized to act as a Divisional agency for said Division and to submit on its behalf the necessary code provisions which upon approval by the President shall be effective until the said Division shall have submitted satisfactory code provisions.

7. This Code shall be in effect beginning ten days after its approval by the President.

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*NOTE: In place of costs you may find it preferable and possible to deal with minimum prices. In my judgment it is preferable to deal with costs. (A.P.H.)

Article VIII. NATIONAL CONTROL COMMITTEE

The Emergency National Committee of the.....industry shall appoint from its own membership a National Control Committee of.....members. (One member will often be enough, unless there are minority interests to be represented, in which event there might be two. The number should not exceed three). The National Control Committee shall shall exercise such authority as may have been delegated to it by the said Emergency National Committee.

All communications and conferences of the.....industry with the President or with his agents concerning the approval or amendment of this Code or of any of its provisions, or any matters relating thereto, shall be through the Said National Control Committee. The National Control Committee shall serve as an executive agency for the Emergency National Committee of the.....industry, and shall be charge with the enforcement of the provisions of this Code and with the duties, through agents or otherwise, of hearing and adjusting complaints, considering proposals for amendments and making recommendations thereon, approving recommendations for exceptions to the provisions of this Code, and otherwise administering its provisions. Any division or any adherent to the provisions of this Code or subject to its terms shall have the right of appeal to the Emergency National Committee from decisions of the National Control Committee and the decision of the said Emergency National Committee on said appeal shall be final.

The function of this Committee shall be the general planning and coordinating for the .....industry, and the cooperation with similar boards of other industries to the end of effecting a balanced national economy.

Article IX. GENERAL

1. No provision in this Code shall be interpreted or applied in such a manner as to:

a. Promote monopolies,
b. Permit or encourage unfair competition,
c. Eliminate or oppress small enterprise, or
d. Discriminate against small enterprises.

2. This Code or any of its provisions may be cancelled or modified and any approved rule issued thereunder shall be ineffective to the extent necessary to conform to any action by the President under section 9 (b) of the National Industrial Recovery Act.

3. The Emergency National Committee of the.....industry and the National Control Committee shall from time to time make to each Division established or to be established under the provisions of this Code, such recommendations, including amendments of this Code, as in their judgment will aid the effective administration of this Code or may be necessary

CHART II of a series
on the "INDUSTRIAL RECOVERY BILL".

Chart I : The Bill as a Whole.

What can a Trade Association do at once?

Chart II : First Steps:
In Effecting an Industry-Organization.

Chart III : A Graphic Industry-Organization Outline.

Chart IV : Present data on Trade Associations in the United States: by Industries: by types of organization: a listing of those which have held Trade Practice Conferences, etc.

MOBILIZATION OF INDUSTRY INTO TRADE ASSOCIATIONS

THE NATIONAL INDUSTRIAL RECOVERY ACT

A HUGE $3,300,000,000 PROGRAM OF PUBLIC-WORKS CONSTRUCTION

WHAT CAN A TRADE ASSOCIATION DO AT ONCE TO PREPARE FOR THE BILL?

IT CAN ACT AT ONCE TOWARD "GETTING ITS INDUSTRY'S HOUSE IN ORDER" -- EVEN THOUGH THERE IS NO LAW AS YET, NO BOARD, NO ADMINISTRATOR.

BUT THERE MAY SOON BE A "NATIONAL INDUSTRIAL RECOVERY ACT" IN SOME FORM. A TRADE ASSOCIATION CAN THEREFORE IMMEDIATELY START PREPARING FOR LATER BENDING TO WASHINGTON A FULL REPORT FOR THE WHOLE INDUSTRY (OR SUB-DIVISION WHICH IT COVERS), UPON SUCH ESSENTIALS REQUIRED BY THE BILL AS:

- MAXIMUM HOURS.
- MINIMUM WAGES.
- PRODUCTIVE CAPACITY.
- PRESENT PRODUCTION.
- COST OF PRODUCTION.
- ITS MAJOR PROBLEMS OF AN "UNFAIR COMPETITION" NATURE.

THE TIMBER PRODUCTS INDUSTRY IS THE "EMPLOYER" OF SOME 1,000,000 PEOPLE, INCLUDING WHOLESALERS AND RETAILERS OF LUMBER AND ALL TIMBER PRODUCTS.

IT IS THEREFORE ONE OF THE LARGER FACTORS IN THE INDUSTRIAL STRUCTURE OF THE UNITED STATES. AND MAY BE ONE OF THE FIRST TO PRESENT ITS CODE TO THE ADMINISTRATOR AT WASHINGTON. UNDER THE TERMS OF THE LAW.

A CHART OF ITS PROPOSED SET-UP IS HERE USED AS AN ILLUSTRATIVE OF AN INDUSTRY WHICH NECESSARILY ACTS AS A COMPOSITE OF MANY MAJOR DIVISIONS.

IT IS CAREFULLY PREPARED. A STUDY OF IT WILL OFFER HELPFUL SUGGESTIONS TO ALL INDUSTRIES AND TRADE ASSOCIATIONS, LARGE OR SMALL.

This is basically the N.L.M.A. Chart, with such changes as:
Addition of data on Hemlock.
Regrouping of the Major Divisions.
Addition of data on Associations

"FOREST PRODUCTS INDUSTRIES" CONTROL ORGANIZATION

ACTION BY INDUSTRY DIVISIONS

Southern Pine Industry	Hardwood Industry	Millwork Industry	West Coast Lumber Industry	Prairie Pine Industry	Northern Hemlock Industry	Northeastern Softwood Industry	Cypress Industry	Redwood Industry	Northern Pine Industry	Shingle Industry	Hardwood Flooring Industry	Poles & Piling Industry	Other Products (no operational)
2 Members	3	1	2	2	1	1	1	1	1	1	1	1	
161,000 employees	105,000 employees	40,000 employees	84,200 employees	47,000 employees	10,000 employees	10,000 employees	8,000 employees	4,000 employees	4,000 employees				

*Such as: Lath & Crates
Cooperage
Naval Stores
Plywood & Veneers
Railroad Ties
Wood Fibre Products
Etc.

Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:	Division Committee on:
a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages	a. Hours & Wages
b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production	b. Production
c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *	c. Prices *
d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions	d. Enforcement provisions
Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee	Executive Committee

NATIONAL INDUSTRY ACTION

For years the Lumber Industry has been fortunate in having two central organizations to guide its national policies on economic and statistical lines - THE NATIONAL LUMBER MANUFACTURERS ASSOCIATION.

Early this year there was formed another organization to work hand in hand with the above association, but which seeks to include all from-producer-to-retailer factors in the timber products industry - THE AMERICAN FOREST PRODUCTS INDUSTRIES, INC.

There is a close tie between the above two organizations and the "National Committee on Wood Utilization", which is housed in the Department of Commerce Building and facilitates the correlation of the economic and statistical current records of all government departments in the interests of the timber products industry. This National Committee is supported by industry funds.

Note: Numbers in parentheses indicate suggested membership of Committees. Numbers not in parentheses indicate suggested representation of trade industry divisions in "Emergency National Committee".

* These committees on "PRICES" will function on much matters as the so-called selling-below-cost will. They will tend to be committees on PRICE POLICIES, rather than price-fixing problems.

In consultation with National Committee of:
a. Wholesale Distributors, including Importers (5) 1
b. Retail Distributors (5) 1
c. Exporters (5) 1

Emergency National Committee (25) persons

In consultation with other industries using forest products (Non participation on "Directions")

In consultation with Similar Committees representing:
Cement
Steel
Brick
Etc

NATIONAL CONTROL COMMITTEE 1 or 3

"NATIONAL INDUSTRIAL RECOVERY ACT" ADMINISTRATION

Charts by G. Perkins.

CHART III . . . . . MAY 31, 1933.

* A Graphic INDUSTRY-ORGANIZATION OUTLINE *

Extra single copies, free, from the National Association of Manufacturers
11 W. 42nd St., New York, N.Y., or Union Trust Bldg., Washington, D.C.

Prepared by the above confederation of over 400 industrial associations in cooperation with the Bureau of Foreign & Domestic Commerce, U.S. Department of Commerce, Wash., D.C.

The members of the N.L.M.A., itself, are employers of some 250,000 persons, and among the loadings national associations (with a rough estimate of the number of employees of the members of each) are:

80,000 - West Coast Lumbermen's Assn.
National Hardwood Lumber Assn.
75,000 - Hardwood Manufacturers Institute
Northern Hemlock & Hardwood Mfgrs.
50,000 - Southern Pine Assn.
43,000 - Western Pine Assn.
7,000 - Southern Cypress Mfgrs. Assn.
3,500 - California Redwood Assn.
Western Forestry & Conservation Assn.

Such divisional associations in all industries should be of immense benefit in the Board of Conciliation and Mediation which will carry out the provisions of the NATIONAL INDUSTRIAL RECOVERY ACT.

These associations has AT ONCE fallen, if desired, the suggestions given on the accompanying chart, No. II.

No. of industry employees based on Census of 1929 data - by N.L.M.A.

EXHIBIT 2

BASIC CODE FOR SUBSTITUTIONS BEFORE
THE POLICY BOARD IN P. R. A. FOR SECTIONS
_____ TO _____
INCLUSIVE

DEFINITION:

The term _____ trade/industry
as used herein includes but is not limited to _____
_____
_____

SECTION I. LABOR PROVISIONS:

A. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

B. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and

C. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

SECTION II. CHILD LABOR:

After August 31, 1933, no person under 16 years of age shall be employed; PROVIDED, however, that where a state law specifies a higher minimum age, no person below the age so specified by such law, shall be employed within that state.

SECTION III. MAXIMUM HOURS:

A. Employees not covered by Section III B (except outside salesmen) may not be employed in any place or manner for more than _____ hours in any one week, averaged over a _____ months' period, but may be employed a maximum week of _____ hours for any _____ weeks, within any _____ months' period; provided, however, that such employees may not be employed more than eight hours in any one day. The hours of any store or service operation shall not be reduced to below _____ hours in any one week, unless such hours were less than _____ hours per week before July 1, 1933, and in the latter case, such hours shall not be reduced at all.

B. No factory or mechanical worker or artisan shall be employed more than a maximum week of_____hours, averaged over a_____months' period, but may be employed a maximum week of_____hours for any_____ weeks within such months' period; provided, however, that such employees shall not be employed more than_____ hours in any one day.

C. The maximum hours fixed in the foregoing paragraphs III A and III B shall not apply to employees in establishments employing not more than two persons in towns of less than 2500 population, which towns are not a part of a larger trade area; nor to registered pharmacists or other professional persons employed in their professions; nor to employees in a managerial or executive capacity, who receive more than $35.00 per week; nor to employees on emergency maintenance and repair work; nor to very special cases where restrictions of hours of highly skilled workers on continuous processes would unavoidably reduce production (state classes and work). But in any such special case, at least time and one-third shall be paid for hours worked in excess of the maximum hours per day hereinbefore provided; not to_____

_____

_____

_____

The population for the purposes of this Code shall be determined by reference to the 1930 Federal Census.

SECTION IV. MINIMUM WAGES:

A. Employees in the classes covered by paragraph III A shall be paid not less than_____dollars per week in any city of over 500,000 population or in the immediate trade area of such a city; nor less than_____ dollars per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population, wages shall be increased by not less than_____percent, provided that this shall not require wages to be paid in excess of_____ per week.

B. Employees of the classes mentioned in paragraph III B shall be paid not less than_____ cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay, regardless of whether the employee is compensated on the basis of a time rate or on piece work performance.

C. (List here exceptions to and exemptions from the above figure, if any.)_____

_____

_____

_____

SECTION V. PRESIDENTIAL MODIFICATION:

The President may, from time to time, cancel or modify any order, approval, license, ruling or regulation issued under this title.

EXHIBIT 3

(ROUGH DRAFT #3 OF MODEL CODE)

CODE OF FAIR COMPETITION AND TRADE PRACTICE

FOR THE _____ INDUSTRY

-ooo-

To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are submitted as a code of fair competition for the _____Trade/Industry, and upon acceptance by the President, shall be the standard of fair competition for this industry.

DEFINITIONS.

The term_____Trade/Industry as used herein includes, but is not limited to, the (building, fabricating, manufacturing, assembling, repairing, reconstructing, remodeling, selling and/or distributing at wholesale or retail, etc.) of (product or merchandise) and (subproduct or merchandise) and (their component and/or repair parts) and (accessories), and other related branches as may from time to time be included under the provisions of this code.

The term unit as used herein includes but is not limited to factories, mills, shops, plants, stores, offices, departments or establishments.

The term employee(s) as used herein means all person(s) employed in the conduct of any phase of the industry.

The term employer(s) as used herein means all those by whom such employees are employed.

The effective date as used herein means the _____ day after this code shall have been approved by the President of the United States.

Population for the purposes of this code shall be determined by reference to the 1930 Federal Census.

I. GENERAL REGULATIONS.

A. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

B. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

C. Employers shall company with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

II. CHILD LABOR.

After _____, 1933, no person under 16 years of age shall be employed; PROVIDED, however, that where a State law specifies a higher minimum age, no person below the age so specified by such law shall be employed within that State.

III. PENAL LABOR.

No penal labor shall be used in the trade/industry governed by this code.

IV. HOURS.

A. Employees not covered by Section IV-B (Except outside salesmen) may not be employed in any place or manner for more than _____ hours in any one week, (averaged over a _____months' period,) but may be employed a maximum week of _____hours for any _____weeks, within any such _____months' period; PROVIDED, however, that such employees may not be employed more than eight hours in any one day. The hours of any store or service operation shall not be reduced to below _____ hours in any one week, unless such hours were less than _____hours per week before July 1, 1933, and, in the latter case, such hours shall not be reduced at all.

B. No laborer, factory employee, mechanical worker, or artisan shall be employed more than a maximum week of _____hours, averaged over a _____months' period, but may be employed a maximum week of _____ hours for any _____weeks within such _____months' period; PROVIDED, however, that such worker may not be employed more than _____ hours in any one day.

C. The maximum hours fixed in the foregoing paragraphs VI-a and IV-B shall not apply to employees on emergency maintenance and repair work, but in any such special case, at least time and one-third shall be paid for hours worked in excess of the maximum hours per day hereinbefore provided; nor to _____ _____ _____.

D. Where a State law specifies a lower maximum number of hours that may be worked, no employee may be worked above the maximum so specified by such State law within that State.

E. The provisions for maximum hours set out in Section IV establish a maximum number of hours of labor per week for every employee covered, so that under no circumstances will such an employee be employed or permitted to work for one or more employers in the industry in the aggregate in excess of the prescribed number of hours in a single week.

V. WAGES.

A. Employees in the classes covered by paragraph IV-A shall be paid not less than _____ dollars per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than _____ dollars per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than _____ dollars per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population, wages shall be increased by not less than _____ percent, provided that this shall not require wages to be paid in excess of _____ dollars per week.

B. Employees of the classes mentioned in paragraph IV-B shall be paid not less than _____ cents per hour (in the North, and not less than _____ cents per hour in the South. The South shall consist of _____ _____. It is agreed that this paragraph establishes a guranteed minimum rate of pay, regardless of whether the employee is compensated on the basis of a time rate or on a piece-work performance.

C. Where a State law specified a higher minimum wage, no employee may be paid less than the minimum so specified by such State law within that State.

D. The amount of differences existing prior to 19__, between the wage rates paid various classes of employees receiving more than the established minimum wage rate shall not be decreased. In no event shall any employer pay an employee a wage rate which will yield a less wage for a work week of _____ hours than such employee was receiving for the same class of work for a _____ hour week prior to _____, 193__.

E. (List here exceptions to, and exemptions from the above wage scale, if any.)

VI/a. POLICY QUESTIONS

A. Policy questions on which there is no ruling at present, but which must be decided one way or the other in the near future - for example; arbitration and adjustment of existing private and public contracts.

B. The problem of labor which is under a long term contract to the employer.

C. Etc.)

VI. TRADE PRACTICES. (Awaiting report from Federal Trade Commission.)

A. First will be listed generally accepted provisions laid down by the Federal Trade Commission and about which there can be no reasonable difference of opinion.

B. Second will be listed the special trade practices peculiar to the particularindustry, including (if the policy is so declared limitations on plant, production, or price.)

VII. INDUSTRIAL SELF-GOVERNMENT AGENCY.

A. (1) The Constitution and by-laws of the _____ _____Association having been amended in all respects and to the extent necessary to make them conform to the National Industrial Recovery Act and to the provisions of this code and the rules provided thereunder, the _____Association is hereby designated to co-operate with the Administrator as a Planning and Fair Practice Committee until such a committee is created by the Industry. Three persons may be appointed by the President to sit on such Committee, and shall in every respect be members thereof, except that they shall not have the right to vote.

(2) To further effectuate the policies of the Act, the _____ _____Association, or such successor committee as may hereafter be constituted, may present to the Administrator recommendations based on conditions in the trade/industry as they may develop from time to time. Such Committee is also to cooperate with the Administrator in collecting such reports as may be required by him concerning the functioning and observance of any provision of this code, and to forward the same to the Administrator.

VIII. INDUSTRIAL RELATIONS.

A. There shall be constituted by appointment of the Administrator a _____National Industrial Relations Board, to be composed of three members, one to be nominated by the _____Planning and Fair Practice Committee to represent the employer, one to be nominated by the Labor Advisory Board of the National Recovery Administration to represent the employees, and a third to be selected by the Administrator. This National Board shall be provided by the National Recovery Administration with a per diem for actual days engaged in such work and with such secretarial and expert technical assistance as it may require in the performance of its duties.

B. The Administrator, upon the nomination of the _____ National Industrial Relations Board, shall appoint in each State in which the _____Trade/Industry operates a State _____ Industrial Relations Board, one of whom shall be selected from the employers of the _____Trade/Industry, one from the employees of the _____Trade/Industry, and a third to represent the public.

C. (1) Whenever in any unit of the industry a controversy shall arise between employer and employees as to any problem of working conditions, the employer and the employees may establish in such unit an Industrial Relations Committee chosen from the management and the employees of the unit, and on which the employer and employees shall have equal representation of not more than three representatives each. If such a committee is not otherwise established, the employer or the employees or both may apply to the State Industrial Relations Board for assistance in establishing in the unit

such an Industrial Relations Committee. The term of service of each Unit Committee shall be limited to the adjustment of the controversy or problem of working conditions, for the adjustment of which the Committee was created.

(2) If the representatives of the employer and of the employees in such Unit Industrial Relations Committee are unable to arrive at an agreement and united action with respect to such differences of opinion, the representatives of the employer or of the employees, or both, may appeal to the State Industrial Relations Board for cooperation and assistance in arriving at an agreement and united action.

(3) It shall be the duty of the State Industrial Relations Board to endeavor to adjust the controversy. In cases where the State Board reaches agreement with respect to any controversy, such agreement shall be final, except that it shall be submitted to the _____ National Industrial Relations Board for review and approval under such regulations as the National Board may establish.

D. (1) It shall be the duty of the State Industrial Relations Board, where their assistance is requested, as provided in sub-section 3, to cooperate with employers and employees in organizing industrial relations committees in individual _____ units and to cooperate with such committees in the development of conference procedure and in the adjustment of differences of opinion with respect to the operation or introduction of any systems or other problems of working conditions.

(2) In the event that the State Industrial Relations Board is unable to bring about agreement and united action of labor and management in a controversy submitted to it, such State Industrial Relations Board shall present the controversy to the National Industrial Relations Board for hearing and final adjustment.

E. The National Industrial Relations Board shall hear and finally determine all such questions brought before it by the State Industrial Relations Boards and certify its decisions to the Administrator, and shall have authority to codify the experience of the Industrial Relations Committees of the various units and State Boards, with a view to establishing standards of general practice with regard to systems and other problems of working conditions.

IX. MODIFICATION OF THE CODE.

Recommendations for modification of this code may be made to the _____ Planning and Fair Practice Committee by any group representing industry, labor, or consumer. If the Committee approves of such recommendation it shall forward the same to the Administrator. If there is an unreasonable refusal to act on the part of the Committee, and the recommendation be made by a substantially interested group, they may forward a copy of their recommendation and a statement of the Committee's refusal to act directly to the Administrator, filing a copy of such communication with the members of the Committee appointed by the President.

X. _____

(Additional clauses, amendments, modifications, etc.)

XI. PETITION FOR EXEMPTION.

During the _____ period between the acceptance of the code by the President and the effective date, hearings may be given by the Administrator or his designated representative to units of the industry which did not participate in establishing, or consent to, the code, but which directly affected thereby, and which claim that applications of the code in particular instances are unjust as to them, and which apply for an exception to, or exemption from, or modification of the code.

XII. CHANGES AND ADDITIONS.

Such of the provisions of this code as are not required to be included therein by the National Industrial Recovery Act, may, with the approval of the President, be modified or eliminated in any such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience; and supplementary provisions of this code or additional codes may be submitted from time to time for the approval of the President. All the provisions of this code, unless so modified or eliminated, shall remain in effect until the expiration date of Title I of the National Industrial Recovery Act.

XIII. PARTIAL INVALIDITY.

If any provision of this code is declared invalid or unenforceable, the remaining provisions thereof shall nevertheless continue in full force and effect in the same manner as if they had been separately presented for approval, and approved by the President.

XIV. PRESIDENTIAL MODIFICATION.

The President may, from time to time, cancel or modify any order, approval, license, rule, or regulation issued under this title.

_____

_____ (Date) _____ 1933 _____

_____

EXHIBIT 4

(ROUGH DRAFT #4 OF MODEL CODE)

CODE OF FAIR COMPETITION AND TRADE PRACTICE

FOR THE _____ INDUSTRY

- - - -

To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are submitted as a code of fair competition for the _____Trade/Industry, and upon approval by the President, shall be the standard of fair competition for this industry.

DEFINITIONS

The term _____ _____Trade/Industry as used herein includes, but is not limited to, the (building, manufacturing, repairing, selling and/or distributing at wholesale or retail, etc. of (product or merchandise) and branches or subdivisions thereof as may from time to time be included under the provisions of this code.

The term unit as used herein includes but is not limited to factories, mills, shops, plants, stores, offices, departments or establishments.

The term employee as used herein means any person employed in any phase of the industry.

The term employer as used herein means any employer of such employee.

The effective date as used herein means the first Monday after this code shall have been approved by the President of the United States.

- - - -

Population for the purposes of this code shall be determined by reference to the 1930 Federal Census.

I. GENERAL REGULATIONS

A. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activites for the purpose of collective bargaining or other mutual aid or protection;

B. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

C. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

II. CHILD LABOR

After _____, 1933, no person under 16 years of age shall be employed in the Trade/Industry; PROVIDED, however, that where a State law specifies a higher minimum age, in that respect the requirement of such law shall govern within that State.

III. PENAL LABOR

No penal labor shall be used in this Trade/Industry

IV. HOURS

A. Employees not covered by Section B of Article IV may not be employed in any place or manner for more than _____hours in any one week, nor be employed more than eight hours in any one day.

B. No laborer, factory employee, mechanical worker, or artisan shall be employed more than a maximum week of _____hours, nor be employed more than _____hours in any one day.

C. The maximum hours fixed in the foregoing sections A and B of Article IV shall not apply to employees on emergency maintenance and repair work, but in any such special case, at least time and one half shall be paid for hours worked in excess of the maximum hours per day hereinabove provided.

D. Where a State law specifies a lower maximum number of hours that may be worked, in that respect the requirements of such State law shall govern.

E. The provisions for maximum hours set out in Section IV establish a maximum number of hours of labor per week for each employee so that under no circumstances shall any employee be employed or permitted to work for one or more employers in the industry in the aggregate in excess of the prescribed number of hours.

V. WAGES

A. Employees in the classes covered by Section A of Article IV shall be paid not less than _____dollars per week.

B. Employees of the classes mentioned in Section B of Article IV shall be paid not less than _____cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay, regardless of whether the employee is compensated on the basis of a time rate or on piece work performance.

C. Where a State law enforces higher minimum wage requirements as to any class of labor, no such employee may be paid less than the minimum so specified by such State law within that State.

D. (The proponents of the code are expected to submit a plan for equitable adjustment of those wages above the minimum).

VI. INDUSTRIAL SELF-GOVERNMENT AGENCY

A. (1) The _____Association (the constitution and by-laws of which conform in all respects to the requirements of Title I of the National Industrial Recovery Act and of this code) is hereby designated to cooperate with the Administrator as a planning and fair practice agency until a permanent committee for such purpose is created by the industry.

(2) (Insert machinery for erection of such a permanent Committee).

(3) Three persons may be appointed by the President to sit on such Committee, and shall in every respect be members thereof, except that they shall not have the right to vote.

(4) To effectuate the policies of the Act, the _____ _____ _____Association, or such successor committee as may hereafter be constituted, may present to the Administrator recommendations of his own, or those of any interested party or group, based on conditions in the Trade/Industry as they may develop from time to time. Such Committee shall also cooperate with the Administrator in collecting such reports as may be required by him in order to record the functioning or observance of this code, and shall forward the same to the Administrator. The members shall furnish to the Committee such reports as may be required by the Administrator.

VII. INDUSTRIAL RELATIONS

A. There shall be constituted by appointment of the Administrator a _____ _____National Trade/Industry Industrial Relations Board, to be composed of three members, one to be nominated by the _____Trade/Industry Planning and Fair Practice Committee to represent the employer, one to be nominated by the Labor Advisory Board of the National Recovery

Administration to represent the employees, and a third to be selected by the Administrator. This National Board shall be compensated by the National Recovery Administration on a per diem basis for actual days engaged in such work and with such secretarial and expert technical assistance as it may require in the performance of its duties.

B. The Administrator, upon the nomination of the _____ National Industrial Relations Board, shall appoint in each State or greater geographical district in which the _____ Trade/Industry operates a State or district _____ Trade/Industry Industrial Relations Board, one of whom shall be selected from the employers of the _____ Trade/Industry, onefromthe employees of the _____ Trade/Industry, and a third to represent the public.

C. (1) Whenever in any unit of the industry a controversy shall arise between employer and employees as to any problem of working conditions, the employer and the employees may establish in such unit an Industrial Relations Committee chosen from the management and the employees shall have equal representation of not more than three representatives each. If such a committee is not otherwise established, the employer or the employees or both may apply to the State or district Industrial Relations Board for assistance in establishing in the unit such an Industrial Relations Committee. The term of service of each Unit Committee shall be limited to the adjustment of the particular controversy or problem of working conditions, for the adjustment of which the Committee was created.

(2) If the representatives of the employer and of the employees in such Unit Industrial Relations Committee are unable to bring about an adjustment with respect to such controversy, the representatives of the employer or of the employees, or both, may appeal to the State/District Industrial Relations Board for cooperation and assistance in arriving at an adjustment.

(3) It shall be the duty of the State/District Industrial Relations Board to endeavor to adjust the controversy. In cases where the State/District Board fails to bring about an adjustment of any controversy, such controversy shall be submitted to the _____Trade/Industry National Industrial Relations Board for adjustment.

D. It shall be the duty of the State/District Industrial Relations Board, where their assistance is requested, as provided in subsection 3 of Section C, to cooperate with employers and employees in organizing industrial relations committees in individual units and to cooperate with such committees in the development of conference procedures and in the adjustment of differences with respect to the operation or introduction of any systems or other problems of working conditions.

VIII. MODIFICATION OF THE CODE

Recommendations for modification of this code may be made to the _____ Planning and Fair Practice Committee by any interested party or group representing industry, labor, or consumer. If the Committee approves of such recommendation it shall forward the same to the Administrator. If there is an unreasonable refusal to act on the part of the Committee, and the recommendation be made by a substantially interested group, such party or group may forward a copy of the recommendation and a statement of the Committee's refusal to act directly to the Administrator, filing a copy of such communication with the members of the Committee appointed by the President.

IX. CHANGES AND ADDITIONS

Such of the provisions of this code as are not required to be included therein by the National Industrial Recovery Act, may, with the approval of the President, and shall at his request, be modified in any manner indicated, by changes in circumstances, or by experience, or otherwise; and supplementary provisions of this code or additional codes may be submitted from time to time for the approval of the President. All the provisions of this code, except as so modified, shall remain in effect until the expiration date of Title I of the National Industrial Recovery Act.

X. PARTIAL INVALIDITY

If any provision of this code is declared invalid or unenforceable, the remaining provisions thereof shall nevertheless continue in full force and effect in the same manner as if they had been separately presented for approval, and approved by the President.

XI. PRESIDENTIAL MODIFICATION

The right of the President, from time to time, to cancel or modify any order, approval, license, rule, or regulation, issued under this title, is recognized and acquiesced in.

_____

(Date) _____, 1933 _____

_____

9810

EXHIBIT 5.

TYPES OF UNFAIR COMPETITION (Pgs. 69-74)

(Annual Report - Federal Trade Commission - Fiscal Year Ended June 30, 1934.)

Practices Condemned in Orders to Cease and Desist

The following partial list shows unfair methods of competition condemned by the Commission from time to time in its orders to cease and desist issued under section 5 of the Federal Trade Commission Act.

These do not include Clayton Act violations, which, under the jurisdiction of the Commission, embrace, subject to the various provisions of the statute, price discrimination (sec. 2, Clayton Act), typing and exclusive contracts or dealings, corporate stock acquisitions (sec. 7, Clayton Act), and interlocking directorates (sec. 8, Clayton Act).

The list is as follows:

The use of false or misleading advertising, calculated to mislead and deceive the purchasing public to their damage and to the injury of competitors.

Misbranding of fabrics and other commodities respecting the materials or ingredients of which they are composed, their quality, purity, origin, or source, and selling them under such names and circumstances that the purchaser would be misled in these respects.

Bribing buyers or other employees of customers and prospective customers, without the latter's knowledge or consent, to secure or hold patronage.

Procuring the business or trade secrets of competitors by espionage, or bribing the employees or by similar means.

Inducing employees or competitors to violate their contracts and enticing away employees of competitors in such numbers or under such circumstances as to hamper or embarrass the competitors in the conduct of their business.

Making false and disparaging statements respecting competitors' products, their business, financial credit, etc.

Wide-spread threats to the trade of suits for patent infringement arising from the sale of alleged infringing products of competitors, such threats not being made in good faith but for the purpose of intimidating the trade and hindering or stifling competition.

Passing off goods or articles for well and favorably known products

of competitors through appropriation or simulation of such competitors' trade names, labels, dress of goods, etc., with the capacity and tendency unfairly to divert trade from the competitors, and/or with the effect of so doing to their prejudice and injury and that of the public.

Selling rebuilt, second-hand, renovated, or old products or articles made from used or second-hand materials as and for new.

Paying excessive prices for supplies for the purpose of buying up same and hampering or eliminating competition.

Using concealed subsidiaries, ostensibly independent, to secure competitive business otherwise unavailable.

Cooperative schemes and prices for compelling wholesalers and retailers to maintain resale prices fixed by the manufacturer for resale of his product.

Using merchandising schemes based on a lot or chance.

Combinations or agreements of competitors to enhance prices, maintain prices, bring about substantial uniformity in prices or to divide territory or business, to cut off competitors' sources of supply, or to close markets to competitors, or otherwise restrain or hinder free and fair competition.

Various schemes to create the impression in the mind of the prospective customer that he or she is being offered an opportunity to make a purchase under unusually favorable conditions when such is not the case, with capacity and tendency to mislead and deceive many of the purchasing public into buying products involved in such erroneous belief, and/or with the effect so to do, to the injury and prejudice of the public and of competitors, such schemes including -

(1) Sales plans in which the seller's usual price is falsely represented as a special reduced price made available on some pretext for a limited time or to a limited class only.

(2) The use of the "free goods" or service device to create the false impression that something is actually being thrown in without charge, when, as a matter of fact, it is fully covered by the amount exacted in the transaction taken as a whole.

(3) Use of misleading trade names calculated to create the impression that a dealer is a manufacturer selling directly to the consumer with resultant savings.

(4) Use of pretended exaggerated retail prices in connection with or upon the containers of commodities intended to be sold as bargains at lower figures.

Subsidizing public officials or employees through employing them or their relatives under such circumstances as to enlist their interest in situations in which they will be called upon by virtue of their official position to act officially, making unauthorized changes in proposed municipal bond issues, corrupting public officials or employees and forging their signatures, and using numerous other grossly fraudulent coercive and oppressive practices in dealing with small municipalities.

Imitating or using standard containers customarily associated in the mind of the general purchasing public with standard weights or quantities of product therein contained to sell to the public such commodity in weights or quantities less than the aforementioned standards, with capacity and tendency to deceive the purchasing public into believing that they are purchasing the quantities generally associated with the standard containers involved, and/or with the effect of so doing, and with tendency to divert trade from and otherwise injure the business of competitors who do not indulge in such practices and/or with the effect of so doing, to the injury of such competitors and to the prejudice of the public.

Concealing business identity in connection with the marketing of one's product, or misrepresenting the seller's relation to others, e. g., claiming falsely to be the agent or employee of some other concern or failing to disclose the termination of such a relationship in soliciting customers of such concern, etc.

Misrepresenting in various ways the advantages to the prospective customer of dealing with the seller, with the capacity and tendency to mislead and deceive many among the consuming public into dealing with the person or concern so misrepresenting, in reliance upon such supposed advantages, and to induce their purchases thereby, and/or with the effect of so doing, to the injury and prejudice of the public and of competitors, such as -

(1) Seller's alleged advantages of location or size.

(2) False claims of being the authorized distributor of some concern.

(3) Alleged enforcement of the concern or product by the Government or by nationally known businesses.

(4) False claim by a dealer in domestic products of being an importer, or by a dealer of being a manufacturer, or by a manufacturer of some product of being also the manufacturer of the raw material entering into the product.

(5) Being manufacturer's representative and outlet for surplus stock sold at a sacrifice, etc.

(6) Representing that the seller is a wholesale dealer, grower, producer or manufacturer, when in fact such representation is false.

Use by business concerns associated as trade organizations or otherwise of methods which result, or are calculated to result, in the observance of uniform prices or practices for the products dealt in by them, with consequent restraint or elimination of competition, such as use of various kinds of so-called standard cost systems, price lists or guides, exchange of trade information, etc.

Obtaining business through undertakings not carried out and through dishonest oppressive devices calculated to entrap and coerce the customer or prospective customer, with the result of deceiving the purchasing public and inducing purchases by many thereof, and of diverting and tending to divert trade from competitors who do not engage in such false, misleading, and fraudulent representations, all to the prejudice and injury of the public and competitors, such practices including -

(1) Securing by deceit prospective customer's signature to a contract and promissory note represented as simply an order on approval; obtaining agents to distribute the seller's products through promising to refund the money paid by them should the product prove unsatisfactory, and through other undertakings not carried out.

(2) Obtaining business by advertising a "free trial" offer proposition, when, as a matter of fact, only a "money-back" opportunity is offered the prospective customer.

Giving products misleading names so as to give them a value to the purchasing public or to a part thereof which they would not otherwise possess, with the capacity and tendency to mislead the public into purchasing the products concerned in the erroneous beliefs thereby induced, and with the tendency to divert and/or with the effect of diverting business from and otherwise injuring and prejudicing competitors who do not engage in such practices, all to the prejudice of the public and of competitors, such as -

(1) Names implying falsely that the particular products so named were made for the Government or in accordance with its specifications and of corresponding quality, or are connected with it in some way, or in some way have been passed upon, inspected, underwritten, or endorsed by it; or

(2) That they are composed in whole or in part of ingredients or materials respectively, contained only to a limited extent or not at all; or

(3) That they were made in or came from some locality famous for the quality of such products; or

(4) That they were made by some well and favorably known process, when, as a matter of fact, they were only made in imitation of and by a substitute for such process; or

(5) That they have been inspected, passed, or approved, after meeting the tests of some official organization, charged with the duty of making such tests expertly, disinterestedly, or giving approval; or

(6) That they were made under conditions or circumstances considered of importance by a substantial part of the general purchasing public, etc.

Selling below cost, with the intent and effect of hindering, stifling, and suppressing competition.

Dealing unfairly and dishonestly with foreign purchasers and thereby discrediting American exporters generally, with the effect of bringing discredit and loss of business to all manufacturers and business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency to so do, to the injury and prejudice of the public and of offending concerns' export trade competitors.

Coercing and enforcing uneconomic and monopolistic reciprocal dealing.

Falsely representing that a moving picture is a pictorial record of an expedition in a foreign country and a depiction of travel therein showing true happenings, peoples, customs, and animal life.

Entering into contracts in restraint of trade whereby foreign corporations agree not to export certain products into the United States, in consideration of a domestic company's refusal to export the same commodity or sell to anyone other than those who agree not to so export the same.

EXHIBIT 6

September 1933

Confidential report

of the "NRA-Commerce" Committee on an

AMERICAN BASIC-CODE
****
OF FAIR-PRACTICES.
****

Unfair practice provisions in any code of fair competition for an industry will have little value unless they are feasible for practical enforcement. No industry is completely isolated. It has some relationship with other industries either through a "vertical" association as one of the steps between production and consumption or through a "horizontal" arrangement of industrial contact.

The whole code structure is so directly balanced on the theory of "BUSINESS GOVERNING ITSELF" and prompt protection by enforcement that unless the means of enforcement are clearly understood and easily demonstrated it will be practically impossible to obtain any material degree of compliance. The uniformity of provision and procedure in enforcement will eliminate that difficulty entirely.

Having completed our survey we recommend that the philosophy of the 16 provisions on pages 3 and 4, covering basic "cut-throat competition" evils, be universally adopted; after desired refinements or regrouping by General Counsel Richberg and your NRA Legal Staff. This step would meet unanimous employee-employer approval throughout the United States.

Sept. 1933

Confidential memorandum on UNFAIR COMPETITION.

NRA LEGAL DIVISION
Blackwell Smith, Esq.

Your last week's speech in Chicago before the Trade Assn. Managers' annual convention announced that "an unofficial NRA-Dept. of Commerce Committee" was surveying the problem of FAIR PRACTICES, including the 14 years of trade association efforts in this field with Federal Trade Commission cooperation.

The Employers' Reward:

(The managers present, representing the nation's employers, stressed the immediate need of Government help to control Unfair Competition:
"American employers' promised reward from NRA for the hours-wages benefits recently given their employees.")

Investment of Capital:

NRA's "New Deal" Program has recently brought employment to some 3,000,000 American workers, of last winter's estimated total of 14,000,000 unemployed. The country has an abundance of capital. (Our annual national income is normally ¼ that of the entire world!) Yet investment in new labor-giving industries is unfortunately hesitant.

Because of the complex overlapping of industries, investors and employers cannot (without universal adoption of uniform basic Fair-Practices Rules) protect themselves against the "cut-throat minority" of business firms. It is chiefly the practices of such firms that hampers business stabilization and national-economic-planning efforts to permanently reduce unemployment.

Necessity of White House aid:

Your Committee believes, frankly, that NRA success in this field cannot be won without a Presidential Order blanketing these few basic fair-practice rules upon all industry and trade at the earliest possible date. Each business group could then concentrate on its "special to our industry" Fair-Practice problems; as explained in attached two pages -- and the 15 page appendix.

* THE
* 16
* BASIC RULES
* * * * * * *

1. Inaccurate advertising -
2. "Bait" advertising -
3. Inaccurate labelling -
4. Inaccurate references to competitors -
5. Claims of "we undersell everyone" -
6. Selling below cost -
7. Threats of law suits -
8. Secret rebates -
9. "Free goods" -
10. Selling on consignment -
11. Bribing employees -
12. False billing -
13. Interference with another's contracts -
14. Repudiating one's own contracts -
15. "Tying" and block-booking contracts -
16. "Black lists."

ETC.

The jam of Hearings & clearances of NRA CODES will be vastly relieved. 30 are approved, but 1,000 others (many minor) remain in NRA.

Confidential

To: NRA LEGAL DIVISION
From the Fair Practices Committee
Guernsey (Chr.)
Heydon
McFadden
Judkins (Sec.)

Sept., 1933 (First draft).
Suggested basic rules for all industries; adapted from the 1919-1933 Trade Practices Conferences.

The Sixteen FAIR-PRACTICE PROVISIONS For Inclusion in All Codes.

Inaccurate Advertising. RULE 1. No member of the industry shall use advertising (whether printed, radio, display or of any other nature) which is inaccurate in any material particular or in any way misrepresents any commodity (including its use, trade-mark, grade, quality, quantity, origin, size, material content or preparation) or credit terms, values, policies or services.

"Bait" advertising. RULE 2. No member of the industry shall use advertising or selling methods or credit terms which tends to deceive or mislead the customer or prospective customer.

Inaccurate labelling. RULE 3. No member of the industry shall brand or mark any commodity in any manner which tends to deceive or mislead purchasers with respect to the grade, quality, quantity, origin, size, material content or preparation of such commodity.

* *

Inaccurate references to competitors, etc. RULE 4. No member of the industry shall use advertisig or other representation which refers inaccurately in any material particular to any competitors or their commodities, prices, values, credit terms, policies or services.

"We undersell all competitors" RULE 5. No member of the industry shall use advertising or other representation which lays claim to or implies a policy or continuing practice of generally underselling all competitors.

Selling below cost RULE 6. No member of the industry shall sell any commodity below cost or replacement value. COST shall include the cost of production in a manufacturing or processing industry; or the net invoice delivered cost in a retail or wholesale industry. (However, any member may meet the price competition of anyone whose costs under this code provision are lower.)

Threats of law suits RULE 7. No member of the industry shall publish or circularize unjustified threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers.

Secret Rebates

RULE 8. No member of the industry shall secretly make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, for the purpose of influencing a sale, nor shall a member secretly extend to any customer any special service or privilege not extended to all customers of the same class.

"Fr Goods"

RULE 9. No member of the industry shall grant an advertising allowance or a premium or any form of free goods except for a definite service rendered and in a form which is accountable.

Selling on Consignment

RULE 10. No member of the industry shall ship commodities consignment, except under contract or bona fide orders.

* *

Bribing employees

RULE 11. No member of the industry shall give, permit to be giving, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee or agent of another in relation to the business of the employer of such employee or the principal of such agent without the knowledge of such employer or principal.

False billing

RULE 12. No member of the industry shall secretly give anything of value to the employee or agent of a customer for the purpose of influencing a sale, or in furtherance of a sale render a bill or statement of account to such employee, agent or customer which is inaccurate in any material particular.

* *

Interference with another's contracts.

RULE 13. No member of the industry shall induce or attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such member interfere with or obstruct the performance of such contractual duties or services.

Repudiating one's own contracts.

RULE 14. No member of the industry shall repudiate a contract entered into in good faith when the purpose of such repudiation is to create for such member an unfair price advantage.

* *

"Tying" & "block-booking" contracts.

RULE 15. No member of the industry shall require that the purchase or lease of any commodity be a prerequisite to the purchase or lease of any other commodity.

"Black" (or white) lists.

RULE 16. No member of the industry shall join with any other member or participate in any transaction known in law as a blacklist.

* *

THEN: any special-to-an industry, etc. Rules.

For NRA Legal

WHAT INDUSTRIAL GROUPS WILL BE MOST AFFECTED BY NRA.?

There were, in April 1930 (date of decennial Census):

122,800,000 people in this country, with
48,800,000 of them "gainfully occupied,"
or 39.8% of the population.

Employment is now at least 8 millions below that of 3½ years ago. The NRA has already, in 3 months, brought employment to 3,000,000. (September Am. Fed. of Labor estimates are: 11 millions & 2.8 millions).
"Normal" NATIONAL INCOME has, in current dollars, dropped from ---------- 80 to 50 billions in 1932.
RETAIL TRADE from ---------- 50 to 30 " in 1932.

WHOLESALE PRICES from ------100 to 70% of normal (1926), in August
RETAIL PRICES from ---------100 to 75% " " " " "

BUSINESS ACTIVITY from -----100 to 65% " " " " "
FACTORY PAYROLLS from -----100 to 50% " " " " "

FACTORY EMPLOYMENT from ----100 to 70% " " " " "
CONSTRUCTION ACTIVITY from--100 to 30% " " " " "

* A "quick-picture" of the job NRA has before it is presented below: *

Of all the 48.8 million persons:	The "SIX NRA" GROUPS of the 10 Census Bureau groups:	There were working, in 1930: (10 yrs. or older in age)	Including:
(29%).....	MANUFACTURING (& mechanical)	(1) "employed"	14.1 million persons..... 1,900,000 women
(13%).....	TRADE (Oct. 1st may see the approval of the NRA's greatest:	employed	6.1 million persons..... 1,000,000 women the "MASTER RETAIL CODE".)
(8%).....	CLERICAL (not incl. store clerks)	employed	4.0 million persons..... 2,000,000 women
(8%).....	TRANSPORTATION (& communication)	employed	3.8 million persons..... 300,000 women
(2%).....	MINERALS	employed	1.0 (practically no) million persons - (females employed)
(½ of 1%)	FORESTRY (& fishing)	employed	0.3 (practically no) million persons - (females employed)
(60%)	of the nation's wage-earners, salaried persons & employers)		29.3 Million persons millions of the 48.8
			5.2 million women & girls

The other 4 Census groups are chiefly "not under NRA."; they total 40% of America's workers:

(21%) ...	AGRICULTURE	employed	10.5 million	persons...	900,000 women
(10%) ...	DOMESTIC SERVICE (& personal ser.)	"	5.0	" " ...	3,200,000 "
(7%)	PROFESSIONAL SERVICE (incl. 161,000 lawyers)	"	3.3	" " ...	1,500,000 "
(2%)	PUBLIC SERVICE	"	0.9	" " ...	- - -
			(19.7)	.....	(5.6)

Total of: 48.8 millions) of whom 10.8 million were women or girls.

(1) "MANUFACTURING", the largest NRA employment group consisted of, roughly:

86% wage-earners
13% salaried employers
1% owners

****
* TO WHOM IS THE NATION'S ANNUAL *
* *
* NATIONAL INCOME DISTRIBUTED? *
****

It is very unfortunate that there have been no official data in the past ten years, but the U. S. Dept. of Commerce will, in December, issue a national survey (now being completed by Dr. Thorp and his staff of the Bureau of Foreign & Domestic Commerce) on this most vital subject. Present estimates of "equitable distribution of wealth" and of "purchasing power" differ widely.

The unofficial estimates of the Nat. Bureau of Economic Research indicated, for 1927, of total national income:

35,000,000 EMPLOYEES received 58% (8 million were on salary)

10,000,000 EMPLOYERS " 42% (6 million of these were farmers; and rec'd the well-known very small per-capita income).

List of usual subjects covered
in the FEDERAL TRADE COMMISSION'S
two classifications of the
1919 - 1933 Trade Practice Conferences:

Clearly illegal:
being violations of Federal
Trade Commission ACT, etc., - - - GROUP "I" RULES
****

Secret rebates.
Substitution of quality.
Breach of contract.
Repudiation of contract.
Commercial bribery.

Fraud.
False certification.
Misbranding.
False quantity.

False defamation of competitors business integrity.
False disparagement of goods.
Misrepresentation in written or spoken word.
Deviation from established standards of the industry.
Underbidding by offering inferior materials.
Unjustly excluding a competitor from a market.
Threats of patent, etc., suits not made in good faith.
Price discrimination under Sec. 2. of Clayton Act.
Selling below cost to injure competitors or lessen competition.
Etc.

- -

"Opinions Of The Trade"; being unfair
or unsound practices which, however,
have not been declared unlawful by the
Commission or Courts; - - - - - - - - - GROUP "II" RULES
****

Style - piracy.
Ambiguous contracts.
Guarantee against price decline or advance.
Post-dating and pre-dating.
Confining sales to F.O.B. factory.
Giving "dealer's discounts" to those not dealers.
Selling without specification.
Abuse of buying power to force unjust terms of purchase or a sale.

For perhaps the most frank recent studies of the commission, and its Trade Practice conference, see the 1930 ANNUAL REPORT OF THE "ATAE" (American Trade Assn. Executives) & the Columbia University Press survey("suggested by Prof.R.G.Tugwell"-now a leader of the Ag. Adj. Adm.): "THE FEDERAL TRADE COMMISSION", 320 pages-T.C.Blaisdell-1932.

For NRA Legal
Aug. 1933

9810

INDEX TO LATEST REPORT OF FEDERAL TRADE COMMISSION

Note: This brief summary (of 26 standardized Group I rules), which we have prepared because the booklet has no index, may be of value to your staff as a handy guide to the recently issued 165 page report, "TRADE PRACTICE CONFERENCES", of the Federal Trade Commission. (It contains only revised rules of 96 of the over 150 industries which have held conferences.)

Our 6 classes	The first words of each 1931-33 Commission rule are:	Page in Booklet	No. of Rule
"INACCURACY" (7)			
	The making or causing or permitting...advertisement	54	8
	The sale or preferring for sale of any product	52	3
	The false marking or branding of products	52	2
	The practice of shipping or delivering products	74	15
	Deviation from the established standards	59	9
	Offering for sale merchandise at a price	65	12
	The use of the word "free" when not properly qualified	105	5
"ATTACKING COMPETITORS" (5)			
	The selling of goods below cost	52	7
	The defamation of competitors)	55	12
	The false disparagement of the grade) 125-2	54	7
	Securing information from competitors	59	7
	The circularization of threats of suit	66	7
"PRICE DISCRIMINATION" (4)			
	The secret payment or allowance	52	4
	It is an unfair practice...to discriminate	52	5
	The shipping of goods on consignment	74	12
	The acceptance of orders for large quantities	133	7
"COMMERCIAL BRIBERY" (3)			
	Directly or indirectly to give	53	8
	For any person...to give anything	130	17
	Commercial bribery is immoral, against the public interest	153	9
"BREACH OF CONTRACT" (5)			
	Maliciously inducing	52	1
	Maliciously enticing	52	9
	The wilful interference by any person	2	1
	The imitation of the trade-marks	54	5
	For any person...to aid or abet another	144	7
"COERCION" (2)			
	The practice of coercing the purchase	54	10
	To incite, aid or abet...anything unlawful	156	6

To Blackwell Smith, Associate Counsel. CONFIDENTIAL (3)

What is a just appraisal of the 1919-33 efforts of the Federal Trade Commission in this field of Fair Practice?

Many believe that a book published in August by the McGraw Hill Company, "Business Under the Recovery Act" (Chapter IV, "A Government Farce that Blazes the Trail"), gives a fair appraisal of the commission's past work:

"A governmental body has been attempting to do this for more than ten years (suppression of unfair competition)... almost precisely what the new NRA Act proposes to do...This is the Federal Trade Commission and the so-called Trade Practice Conferences...

"The Commission's own legal fickleness added to the general legal uncertainty of the entire affair sufficed of themselves to make a hodge-podge of these Trade Practice Conferences...Decision to sign and abide by the Code finally drafted was purely voluntary...

"And Congress never did...(give that power to the Commission)...not until it passed the National Industrial Recovery Act, which specifically designates the Federal Trade Commission as one of the enforcing agents...thus a study of the reasons for the failure of the trade practice conferences really throws a spot-light on the reasons for these... provisions of the New Act.

"But the (150) conferences...provide, ready-made, an interesting list of what industry, itself, has decided constitutes "unfair competition"...at each of these meetings, up to fifteen or more practices were voted to be unfair methods of competition...

"Such a list should be of utmost value...By reading the published reports of all the meetings, it is possible to obtain a list of unfair trade practices that will be an... excellent guide to business conduct in the future...as envisioned in the National Industrial Recovery Act."

To: Blackwell Smith, Esq.
NRA Legal Division.

Sept.

From: Judkins-Guernsey
Hayden-McFadden

The Six Major

FAIR-PRACTICE PROVISIONS

For (Suggested) Inclusion in All Codes.

Note: This preliminary report to you is the result of our careful studying over of the some 1,000 rules adopted by industry itself in the 1919-1933 period, in cooperation with the Federal Trade Commission.

I. INACCURACY

Inaccurate Advertising.

Prov. 1. No member of the industry shall use advertising

(whether printed, radio, display or of any other nature)

which is inaccurate in any material particular or in any way misrepresents any commodity

(including its use, trade-mark, grade, quality, quantity, origin, size, material content or preparation)

or credit terms, values, policies or services.

"Bait" Advertising.

Prov. 2. No member of the industry shall use advertising or selling methods or credit terms which tends to deceive or mislead the customer or prospective customer.

Inaccurate Labelling.

Prov. 3. No member of the industry shall brand or mark any product in any manner which tends to deceive or mislead purchasers with respect to the grade, quality, quantity, origin, size, material content or preparation of such product.

Remarks:

Prohibition against "untruthful and misleading" advertising is included in practically every set of trade-practice conference rules held under the Federal Trade Commission during the past 14 years.

But it is hard to prove untruthfulness with its element of moral impulse or intent and its further element of what is misleading, and to whom. It has been suggested frequently of late that the term "inaccurate" should be used, which provides the business-facts approach or measure instead of the moral approach.

The worst abuses under INACCURACY include:

misrepresentation of quality, use or nature of products
offers of "easy credit" terms which are not in fact extended, and
deceitful branding or labelling of goods in imitation of established brands.

TERMINOLOGY:

It is assumed by the Committee that the legal powers of the NRA vastly exceed those of the Commission during the 14 year period we surveyed. That is one of the reasons our suggested terminology is so greatly simplified: another reason being the stand taken by the American Law Institute and its active sponsors of eminent jurists and lawyers that, in this practical business era, legal verbosity is no longer necessary in 'Law Merchant' acts. For example, although two of the Committee are lawyers, we believe that such a layman-simplification as given below will not weaken the provision against false advertising: (yet will cause NRA to assume leadership in a lasting, needed business-law reform)

Usual wording:

"The making or causing or permitting to be made or published any false, untrue or deceptive statement by way of advertisement or otherwise concerning the" (product of an industry)

Our suggestion:

"No(member) shall use advertising...which is inaccurate in any material particular....

Wording used in FEDERAL TRADE COMMISSION reports, for: "INACCURACY" types of rules.

* * * * *

"The making or causing or permitting to be made or published any false, untrue or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice."

"The sale or offering for sale of any product of the industry by any false means or device which has the tendency or capacity to mislead or deceive customers or prospective customers as to the quantity, quality, substance, or size of such product, is an unfair trade practice."

"The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers with respect to the quantity, quality, size, grade, or substance of the materials purchased, is an unfair trade practice."

"The practice of shipping or delivering products which do not conform to the sample submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions, and with the effect of deceiving or misleading purchasers, is an unfair trade practice."

"Deviation from the established standards of the industry by any deceptive or false means or device with the effect of misleading or deceiving purchasers or prospective purchasers is an unfair trade practice."

"Offering for sale merchandise at a price reduced from a marked up or fictitious price with the tendency and capacity to mislead or deceive purchasers or prospective purchasers is an unfair trade practice."

"Use of the word "free" where not properly or fairly qualified when the article is in fact not free, with a tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice."

. . . . . .

"False and misleading advertising in this industry, regarding the nature of sales outlet, and the making of untruthful claims, intending to deceive purchaser or user, as to the quality of said articles, its source and method of preparation, is an unfair method of competition."

"To sell products which are not plainly and accurately described or branded, and in full compliance with legal and trade definitions and requirements, is an unfair method of competition."

"Advertising by use of the printed word, or pictorial representation, or by radio, or otherwise, for the purpose or with the effect of misleading or deceiving purchasers with respect to the quantity, quality, grade or substance of goods purchased, is an unfair method of competition."

II. ATTACKING COMPETITORS

Inaccurate references to competitors, etc. Prov. 4. No member of the industry shall use advertising or other representation which refers inaccurately in any material particular to any competitors or their merchandise, prices, values, credit terms, policies or services.

"We under-sell all competitors"

Prov. 5. No member of the industry shall use advertising or other representation which lays claim to or implies a policy or continuing practice of generally underselling all competitors.

Selling below cost

Prov. 6. No member of the industry shall sell any product below cost or replacement value. Cost shall include the cost of production in a manufacturing or processing industry; or the net invoice delivered cost in a retail or wholesale industry. (However, any member may meet the price competition of anyone whose costs under this code provision are lower.)

Threats of law suits

Prov. 7. No member of the industry shall publish or circularize unjustified threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers.

* *

Remarks:

The distinction is clear between constructively advertising one's own goods and services and destructively advertising claims or comparisons against competitors. It is sought to prevent a business concern from disparaging others in order to advance itself.

This habit of attacking competitors takes the form of broad claims directed at competitors in general, no one of whom can reply specifically, yet some of whom at least are in fact underselling or meeting the advertiser in price. No such claims to a continuing practice of generally underselling all competitors can be true.

Another form of attacking competitors is the use of "loss leaders", intended both as stimulators of sales and as misleading measures of an implied underselling policy as to other goods as well. Still another attack is to threaten legal action against customers of a competitor on the ground of alleged infringement of a patent or trademark when such right has not yet been adjudicated or established in a court action against the infringing competitor. The damage here is real but difficult of proof because it keeps away prospective customers whose identity cannot be discovered.

Selling below cost is universally condemned and it is especially vicious when one or more units of a multi-unit organization are carried at a loss in order to drive out competitors. The

only problem is what is cost. It is intended that the lowest possible bases be used - that of actual replacement of the goods. When one member's costs are higher than another's, it is necessary to permit him to meet the price competition to avoid what otherwise would amount to virtual monopoly.

Price discrepancy may arise from such causes as: volume of purchases; purchase of "distress and bankrupt" stocks: "close-outs" (through discontinuance of lines); and similar temporary abnormal trade conditions.

Words used in FEDERAL TRADE COMMISSION reports, for:
"ATTACKING COMPETITORS" types of rules.
* * * * * * * * * * *

"The selling of goods below cost with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade is an unfair trade practice."

"The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, with the tendency and capacity to mislead or deceive purchasers or prospective purchasers is an unfair practice."

"The false disparagement of the grade or quality of the goods of competitors with the tendency and capacity to mislead or deceive purchasers or prospective purchasers is an unfair trade practice."

"Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonations of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice."

"The circularization of threats of suit for infringement of patent or trade-mark among customers of competitors not made in good faith but for the purpose and with the effect of harassing and intimidating customers, is an unfair trade practice."

.....

One Industry's Rule: read:

"Advertising should be at all times fair and honest. It is not discreditable to become enthusiastic in print about the goods you offer for sale, but to imply that your neighbor is not selling good products, or to criticise him directly or indirectly is bad enough when practiced by salesmen, but infinitely more serious is it when a paid advertisement conveys even your own apprehension (which may be well founded) to the general reading

public as to your opinions of your competitor or of his wares, and it should not be permitted, because we consider it an unfair method of competition."

"Disparagement of officers, employees and products of competing concerns and circulation of false rumors of financial standing of competitors is an unfair method of competition."

III. PRICE DISCRIMINATION

Secret Rebates

Prov. 8. No member of the industry shall secretly make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, for the purpose of influencing a sale, nor shall a member secretly extend to any customer any special service or privilege not extended to all customers of the same class.

"Free Goods"

Prov. 9. No member of the industry shall grant an advertising, allowance or a premium or any form of free goods except for a definite service rendered and in a form which is accountable.

Selling on Consignment

Prov. 10. No member of the industry shall ship goods on consignment, except under contract or bona fide orders.

* *

Remarks:

There is a proper line to be established between concessions on price and terms on account of volume, purchases, and unfair concessions obtained either with the club of mass buying power of other merchandise or in conspiracy to injure other actual or prospective purchases.

Volume purchases deserve price concessions when then result in production savings or less selling and shipping expense, but not when the terms of sale or a multiplicity of small shipments dissipates the supposed savings. Nor is there any reason why price concessions (in whatever form) to one buyer should not be extended to all buyers under the same stated conditions.

The shipment of goods on consignment is a form of price discrimination when it is extended to some buyers without being available to all under like conditions; it is also a form of unfair practice when used as a method of promoting sales by unsolicited shipment of merchandise on approval or "consignment" in the hope it will induce the recipient to purchase the goods.

Words used
in FEDERAL TRADE COMMISSION reports
for:
"PRICE DISCRIMINATION" types of rules.
* * * * * * * * * * * *

"The secret payment of allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise or secretly extending to certain purchasers special services or privileges, not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade is an unfair trade practice."

"It is an unfair trade practice for any person engaged in inter-state commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce; provided, that nothing herein contained shall prevent discrimination in price between purchasers of the same class on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition, and provide further, that nothing herein contained shall prevent persons engaged in selling the products of this industry in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

"The shipping of goods on consignment, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice."

"The acceptance of orders for large quantities of industry products and then making small delivering at quantity prices for the purpose and with the effect of discriminating unlawfully between different customers of the same class is an unfair trade practice."

.....

"We discourage and abhor all forms or secret rebates and settlements whereby books and accounts can be so manipulated as to cover up the actual conditions. For instance, we strongly condemn refunding of any amount to the purchaser unless it is clearly shown for what reason the refund is made, and that it is legitimate, and charging funds returned to accounts other than the proper ones, we consider unfair and unwise and it is prohibited. We agree that we shall not pursue the aforesaid prohibited practices, by reason of their being an unfair method of competition."

IV. COMMERCIAL BRIBERY

****

Bribing employees — Prov. 11. No member of the industry shall give, permit to be given, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee

or agent of another in relation to the business of the employer of such employee or the principal of such agent without the knowledge of such employer or principal.

False billing

Prov. 12. No member of the industry shall secretly give anything of value to the employee or agent of a customer for the purpose of influencing a sale, or in furtherance of a sale render a bill or statement of account to such employee, agent or customer which is inaccurate in any material particular.

* *

Remarks:

Commercial Bribery is practiced most often between a manufacturer or wholesaler and the agent of a purchaser, the purpose being to influence the agent to violate the trust imposed in him by his principal and appear to exercise his judgment in selection or negotiation when in fact his interest is not exclusively on the side of his principal. Both in law and in Federal Trade Commission rulings the giving of anything of value as an inducement to influence the trusted agent of another is prohibited.

The second paragraph is designed for retail and wholesale codes, to deal with the unfair practice of bribing servants to purchase for their employers at prices lower than the prices charged to such employers, with the difference as the bribe.

Words used
in FEDERAL TRADE COMMISSION reports
for:
"COMMERCIAL BRIBERY" types of rules.
* *

"Directly or indirectly to give or permit to be given or offer to give money or anything of value to agents, employees, or representatives of customers or prospective customers or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of thi their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice."

"For any person, firm or corporation to give anything of value to those employed in any capacity involving special trust (such as instructor, purchaser, supervisor, or school official), without the knowledge of their employers upon the condition or understanding, express or implied, that its goods be recommended or used by such person in preference to the goods or equipment of a competitor or competitors of that person, firm or corporation, with the tendency to injuriously affect the business of competi-

tors, is an unfair trade practice: provided, that nothing in this resolution shall prevent any person, firm or corporation from selling its goods to anyone upon whatsoever terms it sees fit but without any condition or understanding, express or implied, as to the recommendation or use of said goods or equipment."

"Commercial bribery is immoral, against the public interest, and is an unfair method of competition."

.....

"We do hereby condemn the practice of giving money, premiums, or any other forms of gratuity to persons placing orders for the purchase of any products of our industries in all cases where such persons are not the actual purchasers, and the acceptance of the money, premiums, or other forms of gratuity is surreptitious and for the personal benefit of the person placing such order, and we hereby further register our opposition to the practice of giving of so-called advertising specialties bearing the donor's name or imprint, costing more than $2. each

V. BREACH OF CONTRACT

****

Interference with another's contracts.

Prov. 13. No member of the industry shall induce or attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such member interfere with or obstruct the performance of such contractual duties or services.

Repudiating one's own contracts

Prov. 14. No member of the industry shall repudiate a contract entered into in good faith when the purpose of such repudiation is to create for such member an unfair price advantage.

* *

Remarks:

Breaching of contracts for the purpose of taking an unfair price advantage in a rising or falling market, or inducing others to break contracts with competitors by false representation of facts, is an unfair practice. It is desirable to safeguard the integrity of contracts.

Although legal redress is possible for damages suffered by reason of a breach of contract, in the great majority of cases the injustice is suffered in silence because of the fear of reprisal through the withholding of future business or of excessive cost and suit and legal delays

On the practice of inducing the breach of existing contracts between competitors and their customers the Federal Trade Commission's usual rule reads:

"Maliciously inducing or attempting to induce the breach of existing contracts between competitors and their customers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice."

Words used
by FEDERAL TRADE COMMISSION reports,
for:
"BREACH OF CONTRACT" types of rules.

* * * * * * * * * * *

"Maliciously inducing or attempting to induce the breach of existing contracts between competitors and their customers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice."

"Maliciously enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses is an unfair trade practice."

"The wilful interference by any person, association, or corporation, by any means or device whatsoever, with any existing contract between an employer and an employee or agent of such employer, in or about the production, manufacture, transportation, purchase, or sale, of any product of the industry, or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying, or appropriating, in whole or in part, the patronage, property, or business of another engaged in such industry, is hereby declared an unfair trade practice."

"The imitation of the trade-marks, trade names, slogans, or other marks of identification of competitors, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice."

"For any person, firm, or corporation knowingly to aid or abet another in the use of unfair trade practices is an unfair trade practice."

. . . . . .

"Inducing of employees of competitors to violate contracts or enticing away employees of competitors in such numbers, or under such circumstances as to constitute a conversion, and an appropriation of the value created at the expense of the said competitor."

"Contracts, either written or oral, are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market, or by buyers on a declining market, is equally

reprehensible. Such actions shatter confidence, induce violent fluctuations in price, destroy stability in business operations to the consequent injury of the industry as well as the general public, and is an unfair trade practice."

VI. COERCION

"Tying" & "block-booking" contracts.	Prov. 15. No member of the industry shall require that the purchase or lease of any commodity be prerequisite to the purchase or lease of any other commodity.
"Black" (or white) lists.	Prove. 16. No member of the industry shall join with any other member or participate in any trans-action known in law as a blacklist.

Remarks:

Coercion by so-called "tying" contracts, "block-booking" contracts (of the movie industry, etc.), or requiring other lines of goods or products to be bought or leased as a condition precedent to being able to buy or lease the goods or products or services offered, is an unfair practice.

Under the same subject heading, any attempt by joint action to discriminate against one class, group, or race of customers when in fact there is no sound economic ground for such discrimination, is unfair practice.

This completes our list of STANDARD FAIR PRACTICES: Sixteen provisions, in Six classifications:

I.	"INACCURACY" ----------	has 3	provisions (Rules).
II.	"ATTACKING COMPETITORS" ----------	" 4	"
III.	"PRICE DISCRIMINATION" ----------	" 3	"
IV.	"COMMERCIAL BRIBERY"----------	" 2	"
V.	"BREACH OF CONTRACT" ----------	" 2	"
VI.	"COERCION" ----------	" 2	"
		16	in all.

(See following pages for all supplementary or special-to-an-industry provisions.)

VII. SPECIAL PROVISIONS

("Below the Line")

The CODE AUTHORITY (in each industry) shall study the

following proposal fair-practice provisions and from time to time shall make any recommendations to the Administrator for additional provisions to this Code; and when approved by the Administrator, after such hearing as he may prescribe, they shall become a part of this Code and have full force and effect as provisions hereof:

(Here may be set forth fair-practice provisions which the Industry considers it is desirable to incorporate in the Code due to special conditions not covered or not sufficiently covered in our 15 "regular" fair-practice provisions; See list below.

* *

Remarks:

The several standard trade-practice provisions have been prepared with the thought in mind that they are applicable to every code, whether the code covers an industry in the so-called production field or in the so-called distribution field.

In addition it is recognized that special provisions may be required to meet conditions peculiar to a given industry and that there should be no objection to such additional provisions if they are sound. However, it would seem to be an imposition on the N.R.A. LEGAL DIVISION and the cause of unavoidable delay if it were necessary for the Legal Division to inform itself on all the technicalities of the industry which might be involved in its determination of whether or not such proposed additional provisions are in fact sound and desirable. It is proposed, therefore, that any provisions offered by the industry other than those contained in the "standard provisions" above should be incorporated under Group VII so that they do not become operative immediately and can be dealt with in due course after sufficient determination of merits.

"Special Provisions", which our 16 suggested rules may not cover (or sufficiently cover) include:

Returned Goods	Sales by sample
Misuse of leased equipment	Espionage
Slack-filled packages	Design piracy
Trading stamps	Hidden (retail store) demonstrators
Trade discounts	Price guarantees
Credit terms	Special guarantees
Unfair transportation practices	Standardization
	Simplification

EXHIBIT 7

DEPARTMENT OF COMMERCE
WASHINGTON

An Ideal Charter for Trade Associations

PREAMBLE

WHEREAS in the past the economic and industrial development of this country has been predicated upon the principle of independence within the industry in relationship to other groups, and WHEREAS at the present time, increasing experience and wider vision indicate the fundamental interdependence of industry, not only within the industry, but with all groups in the social fabric:

THEREFORE, we the (blank) industry do hereby organize and create the (blank) trade association, for the mutual benefit and advantage of those employed by it, of those engaged in allied industries, of those applying our materials, of those distributing our output, of those consuming our product, and of all those interested in the development, improvement, and betterment of our methods, and in our place in the social and economic organization of the nation.

ARTICLE I -- MEMBERSHIP

This Association, recognizing the interest of other groups in the prosperity, welfare, development, and conduct of the (blank) industry, and desiring the cooperation, the benefit of thought and research, and the suggestions of all those interested in that interdependent structure which affect the welfare of those engaged in this industry, hereby creates the following types of membership.

Active Membership - Any individual, firm or corporation in the (group) is eligible to become an active member of this Association.

Cooperative Membership - Any individual, firm, corporation or organization engaged in related lines, suppliers, distributors, service bodies, scientific groups, representative of other trade, scientific or service bodies, or representative of labor, or consumers, is eligible to this form of membership and may enjoy the facilities of the Secretary's office in the promotion of matters of mutual interest, the privilege of the floor at open sessions, may be assigned to committees, or if deemed desirable may even be elected to office, but shall not have the privilege of voting.

Associate Membership - Any individual, firm, corporation or organization members of either of the above classes of membership may enter one or more associates who by virtue of certain qualifications in the scientific, service, promotion, legal or social fields may be in a position to further the activities and objectives of the association, but privileges of this group are to be no greater than those set forth in the Cooperative Membership group.

ARTICLE II - ECONOMIC OBJECTIVES

WHEREAS the welfare and development of an industry depend upon its stable progress and its planned and proper growth, and

WHEREAS the interest of those dependent upon or connected with the industry is vitally intertwined with the accomplishment of this purpose.

NOW THEREFORE, this Association shall have for its basic purpose a broad vision not only of its own interests, but the interest of those dependent upon it, catering to it, or dealing with it; and for this purpose this Association shall study, investigate, and make research into all those factors which may affect its economic stability, growth, prosperity, and welfare.

For example:

1. Economic planning by the Association.
   a. Model plan for individual firm
   b. Model plan for the entire industry
   c. Model plan for interrelated industries
2. Economic planning in its boradest aspects, cooperating with other trade and professional groups and the government in "National Economic Planning"
3. Preparing surveys as to
   a. Seasonal fluctuations affecting sales product
   b. Cyclical fluctuations

   Etc.....
4. Preparing surveys as to the long-term trends of practices in
   a. Production
   b. Capital goods investments
   c. Marketing
   d. Transportation
   e. Labor and personnel problems
   f. Trade practices and ethical standards
   g. Changes in consumer needs and demands

   .....

5. Statistical activities (to further planning possibilities)

A. Current statistics of production or trade

a. Capacity
b. Purchases
c. Production
d. Stocks on hand
e. Orders, Unfilled
f. Cancellations
g. Shipments
h. Prices
i. Returned goods
j. Inquiries
k. Bids
l. Contracts
.....

B. Labor Statistics

a. Number employed
b. Pay rolls
c. Personnel training
.....

C. Management or Cost Statistics

a. Uniform cost accounting (classification of accounts)
b. Cost estimating
c. Standard forms for orders, bills, bids, contracts, etc.
d. Cost studies of

1. Budget
2. Overheading
3. Production
4. Depreciation
5. Obsolescence
6. Shipping
7. Turnover
8. Stock or inventory control
9. Maintenance of a research library and laboratory

D. Forecasting research as to sales possibilities

a. Consumer needs, potential purchasing power, relation of competing products and possibilities of acceleration by advertising programs.....
b. Based on new inventions in production equipment, etc.
c. Based on equipment expansion.

E. Research into cooperative buying or bulk quantity commitment.
.....

ARTICLE III - BUSINESS OBJECTIVES

WHEREAS an industry which does not render true service to the public, or an industry which is without true profit to itself must eventually face elimination.

NOW THEREFORE, this Association shall have for its immediate purpose the conduct of activities booking toward the betterment of its product, the elimination of wasteful practices, the promotion of high standards of practice, the development of public confidence, and the dissemination of knowledge about the industry's products -- their usefulness and place in the economic scheme.

For example:

1. Cooperative advertising of products to
   a. Manufacturers and distributors in this and related industries
   b. Professional advisors (as architects, engineers, etc.)
   c. The consumer
2. Market Research
   a. Discovering and defining logical market areas of each product
   b. Determining probable long-term market growth factors
   c. Determining normal seasonal fluctuations in sale and consumption
   d. Determining the responsiveness in sale of each product to the business cycle influence.
3. Product Research
   a. As to materials now used
   b. As to new materials
   c. As to new or improve products
   d. As to new uses for present products
4. Industrial Standardization
   a. Standard specifications for raw and semiprocessed materials
   b. Standard specifications for equipment and supplies purchased

c. Sponsorship of standards for articles produced promoting uniformity and interchangeability of parts

d. Trade association certification service ("Standard Quality") and quality trademark

5. Simplified Practice

6. Operation Research

a. Regarding equipment now used

b. Regarding contemplated new equipment

c. Regarding contemplated manufacturing methods

d. Regarding contemplated new utilization of by-products or waste materials

7. Credit Activities

A. Establishment of a credit bureau to

a. Operate within the association

b. Cooperate with other associations

c. Cooperate with commercial credit agencies

B. Establishment of a collection bureau service

8. Transportation Problems

a. Establishment of a traffic department, concerned with rate and classification matters

b. Cooperation with Regional Joint Advisory Boards

c. Clarification of overseas shipping problems

d. Improvement of transportation facilities

9. Insurance Problems

a. Securing equitable rates and uniform schedules

b. Securing more adequate coverage or protection

c. Studying feasibility of cooperative insurance arrangements

d. Acting as insurance service bureau for members

10. Cooperative deliveries

11. Cooperative warehousing

Etc.....

ARTICLE IV - SOCIAL OBJECTIVES

WHEREAS the economic future and progress of industry are predicated upon the welfare, health, safety, economic independence and freedom from uncertainty of those without whose services the industry could not exist.

NOW THEREFORE, this Association shall have for its third purpose the study and formulation of the needs, and plans for meeting the needs of those engaged in this industry, whether management or labor or production or distribution.

For example:

1. Stabilization of Employment

   a. Employment surveys as to wages, hours, personnel, efficiency, adaptability, etc.

   b. Placement service

   c. Cooperation with public or private employment agencies

   .....

2. Unemployment insurance

3. Employee Retirement Plans

4. Training Schools for Employees

   a. For apprentices, manual workers, formen, salaried workers, salesmen, and executives.

5. Living and working conditions

   a. Health, hygiene and welfare provisions

   b. Plant sanitation

   c. Hospital and medical care

   d. Employee recreation

6. Employee Safety Plans

   a. Safety campaigns or contests

   b. First aid instruction

7. Savings Funds and Stock Purchase Plans

8. Encouragement of conciliation and arbitration in disputes or misunderstandings with employees

9. Woman and child labor policies

10. Public relations

    a. Press contact

    b. Government contact (local, state and federal)

    c. Public participation in problems of trade

    d. Educational projects, tributes to industrial or social leaders, etc.

    e. Public information bureaus

    f. Advertising

    Etc.....

ARTICLE V - LEGAL OBJECTIVES

WHEREAS new laws affect industry, and

WHEREAS new industries and new relationships with industries result in laws, and

WHEREAS it is to the interest of this industry, in seeking to abide by existing laws, to have a proper voice in the development of those new laws which may affect this industry directly, or in its relationship to others.

NOW THEREFORE this Association shall have for its fourth purpose the study of pertinent laws, the dissemination of information concerning them and the formulation or criticism of those proposed projects which may concern it, and the development of those activities, functions and purpose which may properly be within its scope.

For Example:

1. Objectives as to existing laws to

    a. Study and determine legal means to further all major and minor objectives

    b. Make available information concerning laws and decisions

    c. Perform service in litigation involving association policy

    d. Assist in relations with governmental regulatory bodies

e. Standardize or improve forms and terminology of commercial and legal documents, etc., peculiar to trade

f. Defend the legality and propriety of the Association's established trade practices

g. Encourage the use of commercial arbitration settling when best suited in misunderstandings or disputes.

2. Objectives as to proposed legislation to

a. Keep posted on all legislative proposals, State and Federal, affecting the industry and related industries,

1. Supply of raw materials

2. Transportation

3. Communication

4. Production - control

5. Etcetera

b. Initiate desirable legislative reforms

c. Promote uniformity of state legislation

EXHIBIT 8

SUGGESTED OUTLINE FOR CODES

-oOo-

The suggestions herein made are intended to assist trade and industry in the preparation of codes.

Except as to those provisions which are required to be included in all codes by the NATIONAL INDUSTRIAL RECOVERY ACT (which provisions are clearly indicated herein), none of the suggestions embodied in this draft are mandatory.

It is believed, however, that the preparation of codes and their approval by the President will be greatly expedited if those who prepare codes conform as far as possible with the uniform phraseology here proposed.

HUGH S. JOHNSON

Administrator for
Industrial Recovery

November 6,
1933

ARTICLE I.

Purposes

To effect the policies of Title I of the NationalIndustrial Recovery Act, this Code is submitted as a Code of Fair Competition for the _____Trade/Industry, and upon approval by the President, its provisions shall be the standards of fair competition for such trade/industry and shall be binding upon every member thereof.

ARTICLE II.

Definitions

(This article on definitions is one of the most important in this Code. Each definition must be worded in clear and specific terms. Concisely state the exact class or classes of enterprise included within the division or divisions of the trade/industry.)

The term "_____Trade/Industry" as used herein includes the _____(state accurately what is included in the trade/industry, whether manufacturing, building, trans-

porting, repairing, selling and/or distributing at wholesale or retail, etc.) of _____(Products, merchandise or service etc.), and such related branches or subdivisions as may from time to time be included under the provisions of this Code by the President of the United States, after such notice and hearing as he may prescribe.

The term "member of the trade/industry" includes, but without limitation any individual, partnership, association, corporation or other form of enterprise engaged in the trade/industry, either as an employer or on his or its own behalf.

The term "employee" as used herein includes any and all persons engaged in the trade/industry, however compensated, except a member of the trade/industry.

The term "Act" and "Administrator" as used herein mean respectively Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

Population for the purposes of this Code shall be determined by reference to the latest Federal Census. (Insert only when needed.)

ARTICLE III.

Hours

MAXIMUM HOURS

Section 1. No employee shall be permitted to work in excess of _____hours in any one week or _____hours in any twenty-four(24) hour period beginning at midnight, except as herein otherwise provided. A normal work day shall not exceed _____hours.

(Maximum hours for special classes of employees, if any, should be inserted under the appropriate paragraph, together with the hours applicable.)

HOURS FOR CLERICAL AND OFFICE EMPLOYEES

Section 2. No person employed in clerical or office work shall be permitted to work in excess of _____hours in any one week or _____ hours in any twenty-four hour period. A normal work day shall not exceed _____hours.

EXCEPTIONS AS TO HOURS.

Section 3. The provisions of this Article shall not apply to travelling salesmen, or to employees engaged in emergency maintenance or emergency repair work, or to persons employed in a managerial or executive capacity who earn not less than Thirty-five Dollars ($35.00) per week.

(Provisions governing over time payments should be inserted at this point; for example, for emergency maintenance and emergency repair, etc.)

STANDARD WEEK

Section 4. No employee shall be permitted to work more than _____days in any _____day period.

EMPLOYMENT BY SEVERAL EMPLOYEES

Section 5. No employer shall knowingly permit any employee to work for any time which, when totaled with that already performed with another employer or employers in this trade/industry, exceeds the maximum permitted herein.

ARTICLE IV.

Wages

MINIMUM WAGES

Section 1. No employee shall be paid in any pay period less than at the rate of_____cents per hour, except as otherwise herein provided.

(Minimum wage adjustments based on locality and/or population may be indicated here.)

PIECEWORK COMPENSATION - MINIMUM WAGES

Section 2. This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece-work, or other basis.

MINIMUM WAGE RATES BY LOCALITY/OCCUPATION

Section 3. After the approval of this Code, the Code Authority may present for approval to the Administrator, after notice and hearing, recommendations as to upward adjustments in minimum wages for specified localities/occupations, in order to effectuate the purposes of the Act.

WAGES ABOVE MINIMUM

Section 4. No employee whose normal full time weekly hours for the four weeks ending _____(date) are reduced by less than ____ percent shall have his or her full time weekly earnings reduced. No employee whose full time weekly hours are reduced by more than said percent shall have his or her said earnings reduced by more than _____ percent.

ALTERNATIVE

There shall be an equitable adjustment of all wages above minimum, and to that end, within (_____days or months) from the approval of this Code, the Code authority shall submit for the approval of the Administrator a proposal for adjustment in wages above the minimum. Upon approval by the Administrator, after such hearing as he may prescribe, such proposal shall become binding as a part of this Code, provided, however, that in no event shall

SUGGESTIONS

hourly rates of pay be reduced.

FEMALE EMPLOYEES

Section 5. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

HANDICAPPED PERSONS

Section 6. A person whose earning capacity is limited because of age or physical or mental handicap may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file with the Code Authority a list of all such persons employed by him.

ARTICLE V.

General Labor Provisions.

CHILD LABOR

Section 1. No person under sixteen (16) years of age shall be employed in the trade/industry. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Administrator before _____(date) a list of such operations or occupations. In any State an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly signed by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

PROVISIONS FROM THE ACT (Inclusion obligatory)

Section 2. In compliance with Section 7(a) of the Act it is provided:

(a) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

(c) That employers shall comply with the maximum hours of labor,

minimum rates of pay, and other conditions of employment approved or prescribed by the President.

RECLASSIFICATION OF EMPLOYEES

Section 3. No employer shall reclassify employees or duties of occupations performed or engage in any other subterfuge for the purpose of defeating the purposes or provisions of the Act or of this Code.

STANDARDS FOR SAFETY AND HEALTH

Section 4. Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment. (Provision may be inserted requiring the Code Authority to submit proposed minimum standards for safety and health of employees.)

STATE LAWS

Section 5. No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

POSTING

Section 6. All employers shall post complete copies of this Code in conspicuous places accessible to employees

ARTICLE VI.

Organization, Powers and Duties

of the Code Authority

ORGANIZATION AND CONSTITUTION

Section 1. There shall forthwith be constituted a Code Authority consisting of _____ persons to be selected in the following manner:

(Here shall be stated the manner in which the members of the Code Authority shall be selected. Provision should be made so that the Code Authority will be truly representative of the various majority, minority, and other interests in the trade/industry. If, however, by reason of conditions peculiar to the trade/industry, selection by the trade/industry is impossible, it may be provided that appointment shall be by the President.)

Section 2. In addition to membership as above provided, there may be _____ members, without vote, to be appointed by the President, to serve for term of _____ months from the date of appointment.

Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

Section 4. In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

Section 5, Members of the trade/industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

Section 6. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful mis-feasance or non-feasance.

POWERS AND DUTIES

Section 7. The Code Authority shall have the following further powers and duties, the exercise of which shall be reported to the Administrator and shall be subject to his right, on review, to disapprove or modify any action taken by the Code Authority.

(a) To insure the execution of the provisions of this Code and provide for the compliance of the trade/industry with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its procedure and for the administration and enforcement of the Code.

(c) To obtain from members of the trade/industry such information and reports as are required for the administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes

recited in Section 3(a) of the Act, which information and reports shall be submitted by members to such administrative and/or government agencies as the Administrator may designate; provided that nothing in this Code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual reports shall be disclosed to any other member of the trade/industry or any other party except to such governmental agencies as may be directed by the Administrator.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to the trade/industry.

(f) To secure from members of the trade/industry an equitable and proportionate payment of the reasonable expenses of maintaining the Code Authority and its activities.

(g) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the trade/industry who have assented to, and are complying with, this Code.

(h) To recommend to the Administrator further fair trade practice provisions to govern members of the trade/industry in their relations with each other or with other trades/industry and to recommend to the Administrator measures for industrial planning, including stabilization of employment.

ARTICLE VII.

Trade Practice Rules

(NOTE: Sponsors of codes, in preparation of drafts for submission to NRA, should select from the following such rules as are deemed applicable to their particular trades or industries and may set forth such other rules as may be deemed desirable, to meet conditions peculiar to their trade/industry, covering such subjects as:

Returned goods
Methods of leasing equipment
Sales by sample
Espionage
Trade discounts and/or selling terms
Transportation practices
Design piracy
Price or special guarantees
Advertising allowances.
etc.)

Rule 1. Inaccurate Advertising.

No member of the industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member, in any way misrepresent any goods (including but without limitation its use, trade-mark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

Rule 2. False Billing.

No member of the industry shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

Rule 3. Inaccurate Labelling.

No member of the industry shall brand or mark or pack any goods in any manner which is intended to or does deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

Rule 4. Inaccurate References to Competitors, etc.

No member of the industry shall publish advertising which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services.

Rule 5. Selling Below Cost.

(Provisions may be inserted against selling below cost based upon principles of costing formulated by the Code Authority and approved by the Administrator. Such provisions should be applicable to the individual industry and should take into consideration the necessity of selling below cost to meet competition, to dispose of distress merchandise, etc.)

Rule 6. Threats of Law Suits.

No member of the industry shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers. Failure to prosecute in due course shall be evidence that any such threat is unwarranted or unjustified.

Rule 7. Secret Rebates.

No member of the industry shall secretly directly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall a member of the industry secretly offer or

extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

Rule 8, Selling on Consignment

No member of the industry shall ship goods on consignment except under circumstances to be defined by the Code Authority, where peculiar circumstances of the trade/industry require the practice.

Rule 9. Bribing Employees.

No member of the industry shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party.

Rule 10. Interference with Another's Contracts.

No member of the industry shall attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such member interfere with or obstruct the performance of such contractual duties or services.

Rule 11. Coercion.

No member of the industry shall require that the purchase or lease of any goods be a prerequisite to the purchase or lease of any other goods.

Rule 12. Blacklisting.

No member of the trade/industry shall join or participate with other members of the trade/industry who with such member constitute a substantial number of members of the trade/industry or who together control a substantial percent of the business in any specific product or products of the trade/industry, in any transaction known in law as a black list, including any practice or device (such as a white list), which accomplishes the purpose of a black list.

ARTICLE VIII.

Export Trade

Section 1. No provision of this Code relating to prices or terms of selling, shipping or marketing, shall apply to export trade or sales or shipments for export trade.

Section 2. Subject to the approval of the Code Authority, the exceptions established by this section shall apply also to sales or shipments of materials actually used in manufacture for export trade.(*)

(*) A provision may be introduced into the administrative section (Continued)

ARTICLE IX.

Modification
(Inclusion of Section 1
Obligatory)

Section 1. This code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, regulation issued under said Act.

Section 2. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the President.

ARTICLE X.

Monopolies, etc.

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XI.

Price Increases.

Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual cost should be delayed, but when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XII.

Effective Date.

This Code shall become effective on the second Monday after its approval by the President (unless otherwise stated).

(*) (Continued) of the Code, providing that questions relating to production for export and sale for export, not enumerated in the above section, may be submitted by any member of the trade/industry to the consideration of the Code Authority; and that its decision thereon shall be submitted to the Administrator and shall not be effective unless and until approved by him.

EXHIBIT 9

SUGGESTED OUTLINE FOR CODES

Draft of October 1,
1 9 3 3.

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For temporary use - proposals for improvement should be delivered to the Legal Division of N.R.A. This form merely embodies suggestions for guidance in preliminary stages of endeavors to prepare codes, and none of the provisions contained therein are to be regarded as having received the approval of the National Recovery Administration or as being applicable to any particular trade/industry.

oOo

CODE OF FAIR COMPETITION

FOR THE _____ TRADE/INDUSTRY

ARTICLE I.

PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the_____Trade/Industry, and upon approval by the President shall be the standard of fair competition for such trade/industry and shall be binding upon every member thereof.

ARTILE II.

DEFINITIONS

The term_____Trade/Industry as used herein includes the_____ (state accurately what is included in the trade/industry, whether manufacturing, building, transporting, repairing, selling, and/or distributing at wholesale or retail, etc.) of_____(product, merchandise, or service, etc.), and such branches or sub-divisions thereof as may from time to time be included under the provisions of this Code.

The term "employee" as used herein includes anyone engaged in the trade/industry in any capacity receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

The term "employer" as used herein includes anyone by whom any such employee is compensated or employed.

The term "member of trade/industry" includes anyone engaged in the trade/industry as above defined, either as an employer or on his own behalf.

The terms "President", "Act," and "Administrator" as used herein shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator of Title I of said Act.

Population for the purpose of this Code shall be determined by reference to the 1930 Federal Census. (Insert only when needed).

ARTICLE III.

HOURS

1. No employees shall be permitted to work in excess of_____ hours in any one week or _____hours in any twenty-four (24) hour period.

(NOTE: Exceptions, if any, should be inserted here, together with the hours applicable to such exceptions.)

2. The maximum hours fixed in the foregoing section shall not apply to any employee on emergency maintenance or emergency repair work involving breakdowns or protection of life or property, but in any such special case at least_____times his normal rate shall be paid for hours worked in excess of the maximum hours herein provided.

3. No employee shall be permitted to work more than_____days in any_____day period.

ARTICLE IV.

WAGES

1. No employee shall be paid at less than the rate of _____ dollars per week of _____hours (or_____cents per hour).

(NOTE: If there are to be wage rates for employees above the minimum, they may be set forth here).

2. This Article establishes a minimum rate of pay, regardless of whether an employee is compensated on a time-rate, piece work, or other basis.

3. (The proponents of the Code are expected to submit a definite plan for an equitable adjustment of those wages above the minimum.)

4. Female employees performing substantially the same work as male employees shall receive the same rates of pay as male employees.

ARTICLE V.

GENERAL LABOR PROVISIONS

1. No person under _____years of age shall be employed in the trade/industry, nor anyone under_____years of age at operations or occupations hazardous in nature or detrimental to health. The Code Authority shall submit to the Administrator before____(date) a list of such occupations. In any State an employer shall be deemed to have

complied with this provision if he shall have on file a certificate or permit duly issued by the authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

2. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

3. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing and

4. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

5. Within each State this Code shall not supersede any laws of such State imposing more stringent requirements on employer regulating the age of employees, wages, hours of work, or health, fire or general working conditions than under this Code.

6. Employers shall not reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act.

7. Each employer shall post in conspicuous places full copies of this Code.

ARTICLE VI

ADMINISTRATION

To further effectuate the policies of the Act, a Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

1. Organization and constitution of Code Authority.

(a) The Code Authority shall consist of___individuals, or such other number as may be approved from time to time by the Administrator, to be selected as hereinafter set forth. The Administrator, in his discretion, may appoint not more than_____additional members (with or without vote) to represent the Administrator or such groups or interests as may be agreed upon (with or without expenses) to the Trade/Industry.

(b) (Here may be set up the manner in which such Code Authority is to be selected, and from which groups.)

(c) Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall: (1) Impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

(d) In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

(e) (Here may be set forth any other provisions dealing with the organization and constitution of the Code Authority or related agencies, such as joint conference boards to confer with labor, etc., which the proponents desire to incorporate.)

2. The Code Authority shall have the following duties and powers to the extent permitted by the Act, subject to the right of the Administrator on review to disapprove or modify any action taken by the Code Authority.

(a) (Here may be inserted provisions for the administration of the Code and the maintenance of the Code Authority and its activities, including the obtaining from employers of reports based on periods of one, two or four weeks or multiples thereof in respect to business, wages, hours of labor, etc., for the Administrator.)

(b) Members of the trade/industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. The reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable to be taken into consideration.

3. In addition to the information required to be submitted to the Code Authority, there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act.

ARTICLE VII.

TRADE PRACTICES

1. The following practices constitute unfair methods of competition for members of the trade/industry and are prohibited:

1. False Marking or Branding: The false marking or branding of any product of the trade/industry which has the tendency to mislead or deceive customers or prospective customers, whether as to the grade, quality, quantity, substance, character, nature, origin, size, finish or preparation of any product of the trade/industry, or otherwise.

2. Misrepresentation or False or Misleading Advertising:

The making or causing or knowingly permitting to be made or published any false, materially inaccurate or deceptive statement by way of advertisement or otherwise, whether concerning the grade, quality, quantity, substance, character, nature, origin, size, finish, or preparation of any product of the trade/industry, or the credit terms, values, policies, or services of any member of the trade/industry, or otherwise, having the tendency or capacity to mislead or deceive customers or prospective customers.

3. Commercial Bribery: Directly or indirectly to give or permit to be given, or offer to give, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase from the makers of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors.

4. Interference with contractual relations: Maliciously inducing or attempting to induce the breach of an existing oral or written contract between a competitor and his customer or source of supply, or interfering with or obstructing the performance of any such contractual duties or services.

5. Secret Rebates: The secret payment or allowance of rebates, refunds, commissions, credits, or unearned discounts, whether in the form of money or otherwise, or the secret extension to certain purchasers of special services or privileges not extended to all purchasers on like terms and conditions.

6. Giving of Prizes, Premiums or Gifts: The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto, by any scheme which involves lottery, misrepresentation or fraud.

7. Defamation: The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or by the false disparagement of the grade or quality of their goods.

8. Threats of Litigation: The publishing or circulating of threats or suits for infringement of patents or trade marks or of any other legal proceedings not in good faith, with the tendency or effect of harassing competitors or intimidating their customers.

9. Espionage of Competitors: Securing confidential information concerning the business of a competitor by a false or misleading statement or representation, by a false impersonation of one in authority by bribery or by any other unfair method.

10. Other Unfair Practices: Nothing in this Code shall limit the effect of any adjudication by the Courts, or holding by the Federal Trade Commission on complaint, finding, and order, that any practices or method is unfair, providing that such adjudication or holding is not inconsistent with any provision of the Act or of this Code.

(NOTE: Members of the trade/industry may accept any of the foregoing which are deemed applicable, and may also set forth such other trade practices, safety and health provisions, and provisions relating to standards, which it is desired to incorporate in the Code. Upon the approval of the Code, additional trade practice provisions may be incorporated in accordance with the provisions of Article VIII, Section 2).

ARTICLE VIII.

MODIFICATION

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

2. This code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modification to be based upon application to the Administrator and such notice of hearing as he shall specify, and to become effective on approval of the President.

(If desired, it may be provided that upon the recommendation of the Code Authority provisions covering specifically described matters may be modified, eliminated or supplemented by the Administrator, after such notice and hearing as he shall specify).

ARTICLE IX

MONOPOLIES, ETC.

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress or discriminate against small enterprises.

ARTICLE X.

PRICE INCREASES

Whereas the policy of the Act to increase real purchasing power will be made possible of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases should be delayed and that, when made, the same should, so far as reasonably possible, be limited to actual increases in the seller's costs.

ARTICLE XI.

EFFECTIVE DATE

This Code shall become effective of the_____day after its approval by the President.

- - -

EXHIBIT 10

CONFIDENTIAL

*SUGGESTED OUTLINE FOR CODES *
*
* Including Some Suggested *
* General Provisions *
****

REVISED *

Draft of
October 25th
1933

Foreword to the attached 12 page "Model Code" (a summary of which is given on the following page).

Suggested "model" provisions for Code Authority By-laws will be contained in a separate mimeograph.

To: BLACKWELL SMITH, Legal Division, N.R.A.

From: CODE STANDARDIZATION GROUP.

The "model code" OUTLINE issued by the Legal Division on October 1st, prepared by yourself, L.M.C. Smith, and others of the Division, stated that it was for temporary use and asked for "proposals for improvement."

> The OUTLINE was the result of an insistent public request, and proved popular. Over 1,000 copies were called for. Business groups seem to heartily desire the time-saving effect of a basic standard framework or outline; on this framework each industry can effectively hang the Code provisions which it desires for its individual needs.

The attached 12 pages contain the majority-opinion suggestions of a group of over twenty persons (listed on following page) who have met daily since October 12th on this matter. Practically every session has been attended by one or more staff members of the:

Executive Office	Consumers Advisory Board
Legal Division	Industrial " "
Research & Planning	Labor " "

U. S. Dept. of Commerce
Federal Trade Commission
etc.

About 200 Codes of Fair Competition have been approved by the President or await his approval (these include all the largest industries), but many times this number are here in preliminary form or are in process of being prepared in all parts of the United States

by smaller industrial groups. Seldom are two alike as to outline form. Many are exceedingly voluminous.

Yet these groups wish to receive the benefits of the National Industrial Recovery Act as soon as possible. Reasonable standardization of the form of Codes should vastly facilitate their clearance through the N.R.A. Divisions, improve understanding of each Code's objectives, assist in desired allied-industries' Code Authority relationships, etc.

This tentative October 25th OUTLINE, now submitted to you for legal refinements and general consideration, consists of some 3,000 words (as compared with about 2,000 in the October 1st draft). The present one was somewhat increased in length so as to include the most desirable of the suggestions submitted by the public and the N.R.A. staff in response to your request for "proposals for improvement".

In size, the present OUTLINE can be summarized thus:

Article I	Purposes	50	words
II	Definitions	180	"
III	Hours	180	"
IV	Wages	540	"
V	General Labor Provisions	440	"
VI	Code Authority Organization	400	"
	" " Powers & Duties	560	"
VII	Trade-Practice Rules	470	"
VIII	Modification	120	"
IX	Monopolies	20	"
X	Price Increases	50	"
XI	Effective Date on each Code	10	"
		3,020	"

The informal CODE STANDARDIZATION GROUP which has worked on this present draft includes the following individuals, a number of whom have attended all of the daily sessions:

(Those indented attended only the last meeting; Oct. 24th)

		Room	Telephone
ALDERSON	Department of Commerce	3076	2384
BARKIN	Labor Advisory Board, NRA	3311	362
COMPTON	Industrial Advisory Board	4821	2128
COLES	Press Division	4514	342
COPELAND	U. S. Central Statistical Board	7033	2650
CORCORAN	Agr. Adj. Adm. (Atty. Frank's office)		

		Room	Telephone
COVER	U. S. Central Stat. Bd.	7028	2650
CULBERTSON	Industrial Advisory Board	4821	2688
CREDITOR	Executive Office	4840	645
EDWARDS	Consumers' Advisory Board	4868	619
ENGLE	Department of Commerce	3860	2170
GATES	Labor Advisory Board	3315	617
GEORGE	Department of Commerce (and Sec., Filene Com. on Trade Practices)	3076	2383
BLASGOW	Deputy Adm., NRA	4064	2324
GUERNSEY	Trade Assns. (Retail-Wholesale)	3087	2418
HAAKE	Trade Assns. (Manufacturing)	3087	2418
HALSTEAD	Office of Dep. Adm. King	4019	2212
HAMMOND	Trade Assn. Division	3039	2375
HEYNIGER	Industrial Advisory Board	4821	2128
HEYDON	Better Business Bureaus	3017	329
HORTON	Federal Trade Commission	National	7720
HUNT	Consumers' Adv. Bd. (From Fed. Trade Commission)	4869	2344
JEFFREY	Executive Office, NRA	4840	2304
JUDKINS	Department of Commerce	3087	2418
JUNKIN	Department of Commerce	3843	2356
JUDLUM	Office of Div. Adm. Whiteside	4830	363
MASSEL	Consumers' Advisory Board	4869	2344
MEYER	Research & Planning Division	3412	2164
MCFADDEN	Trade Assns. (Producers-Mfrs.).	3087	2418
RICE	U. S. Census Bureau	5804	2601
SHANNON	Legal Division	4055	687
SHIELDS	Office of Div. Adm. Muir	4033	2242
LMC SMITH	Legal Division	4041	2341
STONE	Research & Planning Division	4041	2341
THOMPSON	U. S. Central Stat. Bd.	7028	2650
TOMPKINS	Industrial Advisory Board	4821	2128
W WARD	Office of Div. Adm. Simpson	4836	317
WILMOTTE	Labor Advisory Board	3315	617
WORTHY	Office of Dep. Adm. Howard	4320	2641
YOUNG	Office of General Hammond	3059	2375

Dr. E. Christopher Meyer is acting as chairman of the group. Room 3412, Tel. 2164. Mr. C. Judkins is acting as Secretary of the group. Room 3087, telephone 2418.

October 25, 1933

A TWO-PAGE SUMMARY
****
of the
12 page "OUTLINE".

ARTICLE	Section
I....."PURPOSES".	1. (The provisions of the submitted Code, when approved by the President of the United States, are to be binding on every member of the individual industry or trade.)
II...."DEFINITIONS".	1. (Definitions of the industry, member, employee, etc.)
III..."HOURS".	1. Maximum hours. 2. " " for clerical and office employees 3. Exceptions (travelling salesmen, etc.) 4. Standard week. 5. Employment by several employees.
IV...."WAGES".	1. Minimum wage. 2. " " for clerical and office employees. 3. Piecework compensation. 4. Rates by occupations. 5. Evasion through re-employment. 6. Wages above minimum 7. Overtime. 8. Female employees. 9. Handicapped persons.
V....."GENERAL LABOR PROVISIONS".	1. Child labor. 2. a. Collective bargaining. b. Company unions and other labor organizations. c. Employers shall comply with hours, etc. rules. 3. Reclassification of employees. 4. Standards for health and safety. 5. State laws with more stringent requirements. 6. Posting of the Code when approved.
VI...."CODE AUTHORITY". Organization and Powers & Duties.	ORGANIZATION: 1. Its function. 2. Members on the C. A. 3. Participating Trade Assns., shall have no inequitable restrictions on membership.

9810

POWERS & DUTIES.

4. Maintenance of a "truly representative" character.
5. The activities of the C.A.: participating in them - - assenting to - - sharing its expenses.
6. Non-liability of C. A. members for official acts.
7. Following powers & duties, subject to review:
   a. Adopt by-laws...for Code administration.
   b. Statistical reports from members.
   c. Handle Code violations.
   d. Utilize Trade Assn. & other agencies facilities.
   e. Coordinate this Code with related industries.
   f. Create Joint Industrial Relations Board.
   g. Membership fees -- "who accept the benefits or otherwise assent" --
   h. NRA Code Insignia solely to those employers who --
   i. Establish an agency to develop Fair Trade Practices & Industrial Planning.
   j. Consider amendments to the Code.

GENERAL ADMINISTRATIVE PROVISION

8. Statistical data for Government agencies.
9. Method of appealing from Code Authority's actions.

VII..."TRADE PRACTICE RULES"

1. Inaccurate Advertising. 9.
2. "Bait" Advertising.
3. False Billing.
4. Inaccurate Labelling.
5. References to Competitors.
6. Selling Below Cost.
7. Threats of Law Suits.
8. Secret Rebates.
9. Selling on Consignment.
10. Bribing Employees.
11. Interference with Another's Contracts.
12. Repudiating One's Own Contract.
13. Coercion.

VIII.."MODIFICATION".

1. Right of the President to modify. 12.
2. Procedure of members to modify. 12.

IX...."MONOPOLIES".

1. No oppression of small enterprises.

13.

X....."PRICE INCREASES".

1. The policy of the Act is "to increase real purchasing power" --increased prices, therefore, should be limited to actual increases in seller's costs.

13.

XI...."EFFECTIVE DATE".

1. On the 2nd Monday after its approval by the President of the United States.

Our suggested 3,000 word "Model Code" OUTLINE (which these two pages summarize) comprises 11 Articles, including 62 Sections. Yet very few of these Sections are mandatory and the total number of Sections in many codes far exceeds the above total.

CONFIDENTIAL

REVISED

Draft of
October 25th
1933

SUGGESTED OUTLINE FOR CODES

Including Some Suggested General Provisions

The suggestions in this outline are intended to assist trade and industry in the preparation of codes.

Except as to those indicated provisions which the NATIONAL INDUSTRIAL RECOVERY ACT requires in all codes, none of the suggestions in this draft are mandatory.

It is believed, however, that the preparation of codes, and their approval by the President, will be greatly expedited if those who prepare codes resort as far as possible to the uniform wording suggested in this outline.

Circulation of this present draft is limited to N. R. A.

Suggestions for improvements are requested.

ARTICLE I.

Purposes

To effect the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the _____Trade/Industry, and upon approval by the President shall be the standard of fair competition for such trade/industry and shall be binding upon every member thereof.

ARTICLE II.

Definitions

The term_____Trade/Industry as used herein includes the _____(state accurately what is included in the trade/industry, whether manufacturing, building, transporting, repairing, selling and/or distributing at wholesale or retail, etc.) of_____(products, merchandise, or service, etc.) and such related branches or subdivisions thereof as may from time to time be included under the provisions of this Code by the President after such notice and hearing as he may prescribe.

The term "member of the trade/industry" includes any individual, partnership, association, corporation, or other person engaged in the trade/industry, either as an employer or on his or its own behalf.

The term "employer" as used herein means any employer engaged in the trade/industry.

The term "employee" as used herein includes any and all persons engaged in the trade/industry, however compensated, except a member of the trade/industry.

The terms "Act", and "Administrator" as used herein shall mean respectively Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

Population for the purposes of this Code shall be determined by reference to the latest Federal Census. (Insert only when needed.)

ARTICLE III.

III.

Hours
*****

MAXIMUM HOURS*

Section 1. No employee shall be permitted to work in excess of _____(35) hours in any one week or_____(8) hours in any twenty-four (24) hour period, except as herein otherwise provided. A normal work day shall not exceed_____(7) hours.

Note: The figures in brackets are not mandatory, but a are set forth for purposes of illustration.

Each industry may make its own proposals.

----- *(Maximum hours for special classes of employees, if any, should be inserted under the appropriate paragraph, together with the hours applicable.)

HOURS FOR CLERICAL AND OFFICE EMPLOYEES*

Section 2. No person employed in clerical or office work, shall be permitted to work in excess of_____(40) hours in any one week or _____(9) hours in any twenty-four hour period. A normal work day shall not exceed _____(8) hours.

EXCEPTIONS AS TO HOURS

Section 3. The provisions of this Article shall not apply to travelling salesmen, or to employees engaged in emergency maintenance or emergency repair work, or to persons employed in a managerial or executive capacity who earn not less than _____($35.00) per week.

STANDARD WEEK

Section 4. No employee shall be permitted to work more than _____(5) days in any_____(7) day period.

EMPLOYMENT BY SEVERAL EMPLOYERS

Section 5. No employer shall knowingly permit any employee to work for any time which when totaled with that already performed with another employer, or employers, in this trade/industry exceeds the maximum permitted herein.

* See note at center of page on Maximum Hours

ARTICLE IV. IV.

Wages
*****

MINIMUM WAGE

Section 1. No employee shall be paid less than at the rate of_____($14.00) per week of _____(35) hours or _____(40) cents per hour, except as herein otherwise provided.

Note: The figures in brackets are not mandatory, but are set forth for purposes of illustration.

Each industry may make its own proposals.

MINIMUM WAGE FOR CLERICAL AND OFFICE EMPLOYEES

Section 2. No person employed in clerical or office work shall be paid less than_____($14.00) per week.

PIECEWORK COMPENSATION - MINIMUM WAGES

Section 3. This Article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time-rate, piecework, or other basis.

MINIMUM WAGE RATES BY OCCUPATION

Section 4. Within_____days after the approval of this Code, the Code Authority shall determine the occupations in this Industry and present for approval to the Administrator after notice and hearing a schedule of minimum wage rates for occupations by localities.

EVASION THROUGH REEMPLOYMENT

Section 5. No employee now employed at a rate in excess of the minimum shall be discharged and re-employed at a lower rate for the purpose of evading the provisions of this Code.

WAGES ABOVE MINIMUM

Section 6. No employee whose normal full-time weekly hours for the four weeks ending_____(date) are reduced by less than_____(20) percent shall have his or her full-time weekly earnings reduced. Any employee whose said full-time weekly hours are reduced by _____(50) percent shall not have his or her said earnings reduced by more than _____(25) percent. All other employees whose hours are reduced in excess of the said _____(20) percent shall have their earnings adjusted proportionately. The principle of this section shall apply by class of worker to all other employees whose hours have been reduced, whether compensated on a time-rate, piece-work, or other basis.

OVERTIME

Section 7. All employees who work more than the normal number of hours per day in any twenty-four hours, or more than the normal number of hours per week in any seven days, provided in this Code for

the class of work performed by such employees, shall be paid not less than _____(1-1/2) times their normal rate of pay for said excess. Such overtime shall not exceed_____(6) hours in any one week, except in cases of emergency maintenance or emergency repair work involving breakdowns or protection of life or property, provided that all such cases of emergency work shall be reported to the Code Authority.

Note: The figures in brackets are not mandatory, but are set forth for purposes of illustration. Each industry may make its own proposals.

FEMALE EMPLOYEES

Section 8. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

HANDICAPPED PERSONS

Section 9. A person whose earning capacity is limited because of age or physical or mental handicap may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State Authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file with the Code Authority a list of all such persons employed by him.

ARTICLE V. V.

General Labor Provisions
****

CHILD LABOR PROVISION

Section 1. No person under sixteen (16) years of age shall be employed in the trade/industry. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Administrator before_____(date) a list of such operations or occupations. In any State an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly issued by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

PROVISIONS FROM THE ACT (INCLUSION OBLIGATORY)

Section 2. In compliance with Section 7 (a) of the Act, it is provided:

(a) That employees shall have the right to organize and bargain collectively, through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization

or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

(c) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

RECLASSIFICATION OF EMPLOYEES

Section 3. No employer shall reclassify employees or duties of occupations performed for the purpose of defeating the provisions of the Act or of this Code.

STANDARDS FOR SAFETY AND HEALTH

Section 4. Every employer shall provide for the safety and health of his employees at the place and during the hours of their employment. Standards for safety and health shall be submitted by the Code Authority to the Administrator within six (6) months after the effective date of this Code.

STATE LAWS

Section 5. No provisions in this Code shall supersede any State or Federal law which imposes more stringent requirements on employers as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

POSTING

Section 6. All employers shall post complete copies of this Code in conspicuous places accessible to employees.

ARTICLE VI. VI.

Organization, Powers and Duties of the CODE AUTHORITY

****

ORGANIZATION

Section 1. A Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

Section 2. The Code Authority shall consist of _____members to be selected as hereinafter provided, and in addition thereto there may be _____members without vote, to be appointed by the President, to serve without expense to the trade/industry for_____months from the date of appointment.

The trade/industry members shall be selected as follows:

(Here should be stated the manner in which the members of the Code Authority shall be selected. Provision should be made so that the Code Authority will be truly representative of the various majority, minority, and other interests in the trade/industry. If, however, by reason of conditions peculiar to the trade/industry, selection by the trade/industry is impossible, it may be provided that appointment shall be by the President.)

Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the administrator may deem necessary to effectuate the purposes of the Act.

Section 4. In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code authority, or any sub-Code Authority.

Section 5. Members of the trade/industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

Section 6. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority exercising reasonable diligence in the conduct of his duties hereunder be liable to anyone for any action or omission to act under the Code, except for his own willful mis-feasance or non-feasance.

POWERS AND DUTIES

Section 7. The Code Authority shall have the following powers and duties in addition to those elsewhere provided in this Code, subject to the right of the Administrator, on review, to disapprove or modify any action taken by the Code Authority.

(a) To adopt by-laws and rules and regulations for its procedure and for the administration and enforcement of the Code in accordance with the powers herein granted, and to submit the same to the Administrator for his approval together with true

copies of any amendments or additions when made thereto, minutes of meetings when held, and such other information as to its activities as the Administrator may deem necessary to effect the purposes of the Act.

(b) To obtain from members of the industry for use of the Code Authority, for the Administrator in the administration and enforcement of the Code, and for the information of the President, reports based on periods of one, two or four weeks, or multiples thereof, as soon as the necessary readjustment within the industry can be made and to give assistance to members of the industry in improving methods, or in prescribing a uniform system, of accounting and reporting. All individual reports shall be kept confidential as to members of the trade/industry and only general summaries thereof may be published.

(c) To receive complaints of violations of this Code, make investigations thereof, provide hearings thereon and adjust such complaints, and bring to the attention of the Administrator for prosecution, recommendations, and information relative to unadjusted violations; but in no event shall the Code Authority proceed to prosecute without notice to and approval by the Administrator.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein and to pay such trade associations and agencies the cost thereof, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) To coordinate the administration of this Code with such other codes, if any, as may be related to the trade/industry, or any subdivision thereof, and to delegate to any other administrative authority, with the approval of the Administrator, such powers as will promote joint and harmonious action upon matters of common interest.

(f) To create as an Agency of the Code Authority, a JOINT INDUSTRIAL RELATIONS BOARD, consisting of an equal number of representatives of employers and employees, and an impartial Chairman elected by the members of the Board, to investigate all matters in the Code relating to hours, wages and general labor provisions and to report their findings and recommendations to the Code Authority. The designated employees representatives shall be truly representative of the employees of the industry and shall be selected by such employees.

(g) To secure an equitable and proportionate payment of the expenses of maintaining the Code Authority and its activities from members of the industry.

(h) To cooperate with the Administrator in regulating the use of the N.R.A. Code Insignia solely by those employers who have assented to, and are complying with, this Code.

(i) To establish or designate an agency on PLANNING AND FAIR PRACTICE to which shall be added by the Administrator a representative instructed to safeguard the interests of the consumer, which shall cooperate with the Code Authority in developing fair inter and intra trade practices and industrial planning, including the regularization of employment and stabilization of employees for the industry. Any such recommended practices being amendments to the Code must be approved by the President.

(j) To initiate, consider and make recommendations for the modification or amendment of this Code.

GENERAL ADMINISTRATIVE PROVISION

Section 8. In addition to the information required to be submitted to the Code Authority as set forth in this Article there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3(a) of the National Industrial Recovery Act.

Section 9. An appeal from any action by the Code Authority affecting the rights of any employer or employee in the trade/industry may be taken to the Administrator.

ARTICLE VII.

Trade Practice Rules
****
(Still in Process of Revision)

GENERAL DEFINITION

For all purposes of the Code the acts described in this Article shall constitute unfair practices. Any member of the trade/industry who shall directly, or indirectly through any officer, employee, agent or representative, knowingly use, employ, or permit to be employed, any of such unfair practices shall be guilty of a violation of the Code.

(Rules concerning Trade Inaccuracies)

Rule 1. (Inaccurate Advertising.)

No member of the industry shall use advertising (whether printed, radio, display or of any other nature) or other representation which is inaccurate in any material particular or in any way misrepresent any commodity, (including its use, trade-mark, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

Rule 2. ("Bait" Advertising.)

No member of the industry shall use advertising or selling methods or credit terms which have the capacity or tendency to deceive or mislead the customer or prospective customer.

Rule 3. (False Billing.)

No member of the industry shall withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

Rule 4. (Inaccurate Labelling.)

No member of the industry shall brand or mark or pack any commodity in any manner which tends to deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, material content or preparation of such commodity.

(Rules Concerning Attacking of Competitors)

Rule 5. (Inaccurate References to Competitors, etc.)

No member of the industry shall use advertising or other representation which refers inaccurately in any material particular to any competitors or their commodities, prices, values, credit terms, policies or services.

Rule 6. Selling Below Cost

(Provisions may be inserted against selling below cost based upon principles of costing formulated by the Code Authority and approved by the Administrator. Such provisions should be applicable to the individual industry and should take into consideration the necessity of selling below cost to meet competition, to dispose of distress merchandise, etc.)

Rule 7. Threats of Law Suits.

No member of the industry shall publish or circularize unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers.

Rule 8. (Secret Rebates.)

No member of the industry shall secretly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, for the purpose of influencing a sale, nor shall a member secretly extend to any customer any special service or privilege not extended to all customers of the same class.

Rule 9. (Selling on Consignment.)

No member of the industry shall ship commodities on consignment, except under contract or bona fide orders.

(Rule Concerning Commercial Bribery)

Rule 10. (Bribing Employees.)

No member of the industry shall give, permit to be given, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee or the principal of such agent without the knowledge of such employer or principal.

(tentative addition:
(tentative addition provided that nothing herein shall prohibit the free and general distribution of articles used solely for advertising.")

(Rules Concerning Breach of Contract)

Rule 11. (Interference with Another's Contracts.)

No member of the industry shall attempt to induce the breach of an existing contract between a competitor and his employee or customer or source of supply; nor shall any such member interfere with or obstruct the performance of such contractual duties or services. Nothing in this rule shall qualify Section 7 (a) of the National Industrial Recovery Act or obstruct the free exercise of the rights of collective bargaining therein guaranteed.

Rule 12. (Repudiating One's Own Contracts.)

No member of the industry shall repudiate a contract entered into in good faith when the purpose of such repudiation is to create for such member an unfair price advantage.

(Rule concerning Coercion)

Rule 13. (Coercion.)

No member of the industry shall require that the purchase or lease of any commodity be a prerequisite to the purchase or lease of any other commodity.

(NOTE: Members of the trade/industry may adopt any of the foregoing which are deemed applicable. They may also set forth such other trade practices, and provisions relating to standards, which it is desired to incorporate in the Code. Upon the approval of the Code, additional trade practice pro-

visions may be incorporated in accordance with the provisions of Article VIII, Section 2.)

ARTICLE VIII. VIII.

Modification
****

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

2. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modification to be based upon application to the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the President.

ARTICLE IX. IX.

Monopolies, Etc.
****

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE X.

Price Increases
****

Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual cost should be delayed. But when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XI.

Effective Date

This Code shall become effective on the second Monday after its approval by the President.

Suggestions for improvement of this confidential OUTLINE will be appreciated. Kindly communicate them at once to the acting Chairman.

9810

EXHIBIT 11

SUGGESTED OUTLINE

for

USE IN CODE DRAFTING

Draft of April 3, 1934

-oOo-

It is intended that the suggestions herein contained should be used only to the extent that they are found suitable, and none of the provisions herein are required in this precise form except those (clearly indicated) which are required by the National Industrial Recovery Act.

This outline is intended primarily for internal use within NRA. Revisions of particular provisions may be made from time to time and anyone in possession of a copy should keep the same up to date as changes are circulated.

ARTICLE I

Purposes

To effect the policies of Title I of the National Industrial Recovery Act, this Code is submitted as a Code of Fair Competition for the _____ Trade/Industry, and upon approval its provisions shall be the standards of fair competition for such Trade/Industry and be binding upon every member thereof.

ARTICLE II

Definitions

(This article on definitions is one of the most important in this Code. Each definition must b worded in clear and specific terms. Concisely state the exact class or classes of enterprise included within the division or divisions of th trade/industry).

The term "_____ Trade/Industry" (or Trade/Industry") as used herein includes the _____ (state accurately what is included in the trade-industry, whether manufacturing, building, transporting, repairing, selling and/or distributing at whole-sale or retail, etc.) of _____ (products, merchandise or service, etc.,) and such related branches or subdivisions as may from time to time be included under the provisions of this Code.

The term "member of the trade/industry" as used herein includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the trade-industry, either as an employer or on his or its own behalf.

The term "employee" as used herein includes any and all persons engaged in the trade/industry, however compensated, except a member of the trade/industry.

The term "employer" as used herein includes anyone by whom such employee is compensated or employed.

The term "Association" as used herein shall mean the _____ _____ Association.

The terms "President", "Act", and "Administrator" as used herein mean respectively the President of the United States, Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

Population for the purposes of this Code shall be determined by reference to the latest Federal Census. (Insert only when needed.)

ARTICLE III

Hours

MAXIMUM HOURS

Section 1. No employee shall be permitted to work in excess of _____ hours in any one week or _____ hours in any twenty-four (24) hour period (beginning at midnight), except as herein otherwise provided. A normal work day shall not exceed _____ hours.

(Maximum hours for special classes of employees, if any, should be inserted under the appropriate paragraph, together with the hours applicable.)

HOURS FOR CLERICAL AND OFFICE EMPLOYEES

Section 2. No person employed in clerical or office work shall be permitted to work in excess of _____ hours in any one week or _____ hours in any twenty-four (24) hour period. A normal work day shall not exceed _____ hours.

EXCEPTIONS AS TO HOURS

Section 3. The provisions of this Article shall not apply to traveling salesmen, or to employees engaged in emergency maintenance or emergency repair work, or to persons employed in a managerial or executive capacity who earn regularly thirty-five dollars $35.00) per week or more; provided, however, that employees engaged in emergency maintenance and emergency repair work shall be paid at one and one-half (1½) times their normal hourly rate for all hours worked in excess of _____ hours per day and _____ hours per week.

STANDARD WEEK

Section 4. No employee shall be permitted to work more than _____ days in any _____ day period.

EMPLOYMENT BY SEVERAL EMPLOYERS

Section 5. No employer shall knowingly permit any employee to work for any time which, when added to the time spent at work for another employer or employers in this trade/industry (or otherwise), exceeds the maximum permitted herein.

ARTICLE IV

Wages

MINIMUM WAGES

Section 1. No employee shall be paid in any pay period less than at the rate of _____ cents per hour, except as otherwise herein provided.

(Minimum wage adjustments based on locality and/or population, if appropriate, may be indicated here.)

OFFICE AND CLERICAL EMPLOYEES

Section 2. No clerical or office employee shall be paid in any pay period less than at the rate of _____ _____ dollars (_____) per week.

PIECEWORK COMPENSATION - MINIMUM WAGES

Section 3. This Article establishes minimum rates of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece-work, or other basis.

(provisions governing overtime payments should be inserted at this point; for example, for emergency maintenance and emergency repair, etc.)

WAGES ABOVE MINIMUM

Section 4. No employer shall make any reduction in the full time weekly earnings of any employee whose normal full time weekly hours are reduced by _____ percent, or less, below those existing for the four weeks ending _____. When the normal full time weekly hours of an employee are reduced by more than said percent, the full time weekly wage of such employee shall not be reduced by more than one half of the percentage of hour reduction above said percent. In no event shall hourly rates of pay be reduced, irrespective of whether compensation is actually paid on an hourly, weekly or other basis, nor shall any wages be at less than the minimum rates herein provided.

Within _____ days of the effective date hereof, (unless such adjustment has been made theretofore) each employer shall adjust the schedules of wages of his employees in such an equitable manner as will conform to the provisions hereinabove set forth, and still preserve wage differentials reasonably proportionate to those in effect prior to the effective date of this code.

FEMALE EMPLOYEES

Section 5. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

HANDICAPPED PERSONS

Section 6. A person whose earning capacity is limited because of age or physical or mental handicap may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employee.

ARTICLE V

General Labor and other provisions

CHILD LABOR

Section 1. No person under eighteen (18) years of age shall be employed in the Industry except as (list here specific occupations, such as office boys, office girls, messengers, etc.) No person under sixteen (16) years of age shall be employed in the Industry in any capacity. In any State any employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit, duly signed by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

PROVISIONS FROM THE ACT (Inclusion obligatory)

Section 2. (a) Employees shall have the right to organize and bargain collectively through representatives of their own shoosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

EVASION THROUGH SUBTERFUGE

Section 3. No employer shall reclassify employees or duties of occupations performed or engage in any other subterfuge as to defeat the purposes or provisions of the Act or of this Code.

STANDARDS FOR SAFETY AND HEALTH

Section 4. Every employer shall provide for the safety and health of employees during the hours and at the places of their employment. Standards for safety and health shall be submitted by the Code Authority to the Administrator within six months after the effective date of the code.

STATE LAWS

Section 5. No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

POSTING

Section 6. All employers shall post and keep posted copies of this Code in conspicuous places accessible to all employees. Every member of the trade/industry shall comply with all rules and regulations relative to the posting of provisions of Codes of Fair Competition which may from time to time be prescribed by the Administrator.

ARTICLE VI

Organization, Powers and Duties of the Code Authority

ORGANIZATION AND CONSTITUTION

Section 1. A Code Authority is hereby established consisting of _____ persons to be selected in the following manner:

(Here shall be stated the manner in which the members of the Code Authority shall be selected and the terms for which they shall serve. Provision should be made so that the Code Authority will be truly representative of the various majority, minority, and other interests in the trade/industry. If, however, by reason of conditions peculiat to the trade/industry, selection by the trade/industry is impracticable, it may be provided that appointment shall be by the Administrator.)

Section 2. In addition to membership as above provided, there may be _____ members, without vote, to be known as Administration members, to be appointed by the Administrator to serve for such terms as he may specify.

Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

Section 4. In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority.

Section 5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own wilful malfeasance or non-feasance.

Section 6. If the Administrator shall at any time determine that any action of a Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation

of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty (30) days' notice to him of intention to proceed with such action in its original or modified form.

POWERS AND DUTIES

Section 7. Subject to such rules and regulations as may be issued by the Administrator, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code:

(a) To insure the execution of the provisions of this Code and to provide for the compliance of the trade/industry with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its procedure.

(Inclusion of second sentence obligatory)

(c) To obtain from members of the trade/industry such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the trade/industry subject to this Code shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3(a) of the Act to such Federal and State agencies as he may designate; provided that nothing in this Code shall relieve any member of the trade/industry of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other member of the trade/industry or any other party except to such other Governmental agencies as may be directed by the Administrator.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) To make recommendations to the Administrator for the coordination of the administration of this code and such other codes, if any, as may be related to or affect members of the trade/industry.

(f) 1. It being found necessary in order to support the administration of this code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Code Authority is authorized:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code;

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the trade/industry;

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and obtain equitable contribution as above set forth by all members of the trade/industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Each member of the trade/industry shall pay his or its equitable contribution to the expenses of the maintenance of the Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only members of the trade/industry complying with the code and contributing to the expenses of its administration as hereinabove provided, (unless duly exempted from making such contributions,) shall be entitled to participate in the selection of members of the Code Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

3. The Code Authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget; and shall in no event exceed the total amount contained in the approved budget except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved.

(g) (This subsection has been eliminated.)

(e) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to or affect members of the trade/industry.

(f) (1) It being found necessary to support the Administration of this Code, in order to effectuate the policy of the Act and to maintain the standards of fair competition established hereunder, the Code Authority is authorized:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which shall be held in trust for the purposes of the Code and raised as hereinafter provided;

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary:

1. An itemized budget of its estimated expenses for the foregoing purposes, and

2. An equitable basis upon which the funds necessary to support such budget shall be contributed by all members of the Industry entitled to the benefits accruing from the maintenance of such standards, and the administration thereof:

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and collect equitable contributions as above set forth, and to that end, if necessary, to institute legal proceedings therefor in its own name.

(2) Each member of the trade/industry shall be liable for his or its equitable contribution to the expenses of the maintenance of the Code Authority as hereinabove provided. Only members of the trade/industry complying with the Code and making such contribution shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefits of its voluntary activities or to make use of any N.R.A. insignia.

(g) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the trade-industry who have assented to, and are complying with, this Code.

(h) To recommend to the Administrator any action or measures deemed advisable, including further fair trade practice provisions to govern members of the trade/industry in their relations with each other or with other trades/industries; measures for industrial planning, and stabilization of employment; and including modifications of this Code which shall become effective as part hereof upon approval by the Administrator after such notice and hearing as he may specify.

(i) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other codes as may be related to the trade/industry for the purpose of formulating fair trade practices to govern the relationships between employers under this code and under such other codes to the end that such fair trade practices may be proposed to the Administrator as amendments to this code and such other codes.

(j) To provide appropriate facilities for arbitration, and subject to the approval of the Administrator, to prescribe rules of procedure and rules to effect compliance with awards and determinations.

ARTICLE VII

Trade Practice Rules

(Note: Sponsors of codes, in preparation of drafts for submission to NRA, may select from the following such rules as are deemed applicable to their particular trades or industries and may propose such other rules as may be deemed desirable, to meet conditions peculiar to their trade/industry.)

Rule 1. Inaccurate Advertising.

No member of the trade/industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trademark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

Rule 2. False Billing.

No member of the trade/industry shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

Rule 3. Inaccurate Labelling.

No member of the trade/industry shall brand or mark or pack any goods in any manner which is intended to or does deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

Rule 4. Defamation.

No member of the trade/industry shall defame a competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representation, or by falsely disparaging the grade or quality of his goods.

Rule 5. Destructive Price Cutting.

(Possible protective provisions against destructive price cutting will be separately circulated.)

Rule 6. Threats of Law Suits.

No member of the trade/industry shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harrassing competitors or intimidating their customers.

Rule 7. Secret Rebates.

No member of the trade/industry shall secretly offer or make any payment or allowance of a rebate, refund, commission credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall a member of the trade/industry secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

Rule 8. Bribing Employees.

No member of the industry shall give, permit to be given, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

Rule 9. Inducing Breach of Existing Contracts.

No member of the industry shall wilfully induce or attempt to induce the breach of existing contracts between competitors and their customers by any false or deceptive means, or interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of hampering, injuring or embarrassing competitors in their business.

Rule 10. Coercion.

No member of the industry shall require that the purchase or lease of any goods be a prerequisite to the purchase or lease of any other goods.

Rule 11. Open Price Provisions.

(Suggested open price provisions will be separately circulated.)

ARTICLE VIII

Export Trade

Section 1. No provision of this Code relating to prices or terms of selling, shipping or marketing, shall apply to export trade or sales or shipments for export trade. "Export Trade" shall be as defined in the Export Trade Act adopted April 10, 1918.

ARTICLE IX

Modification

(Inclusion of Section 1 Obligatory)

Section 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act.

Section 2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the Administrator, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience. All the provisions of this Code, unless so modified or eliminated, shall remain in effect until June 16, 1935.

ARTICLE X

Monopolies, etc.

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XI

Price Increases

Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual cost should be delayed, and when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XII

Effective Date

This Code shall become effective on the second Monday after its approval by the President, (unless otherwise stated.)

DESTRUCTIVE PRICE CUTTING
and
OPEN PRICES

Provisions on destructive price cutting and open prices are still in a formative state. They will be separately circulsted for suggestions and will be dealt with in the near future.
9810

INDUSTRIAL RELATIONS COMMITTEES

There shall be established an Industrial Relations Committee for the trade/industry, which shall consist of an equal number of representatives of employers and employees and an impartial chairman. The Administrator shall appoint such impartial chairman upon the failure of the committee to select one by agreement. If no truly representative labor organization exists, the employee members of such board may be nominated by the Labor Advisory Board of the N.R.A. and appointed by the Administrator. The employer representatives shall be chosen by the Code Authority. Such committee shall deal with complaints and disputes relating to labor in accordance with rules and regulations issued by the Administrator. The Industrial Relations Committee may establish such divisional, regional, and local industrial adjustment agencies as it may deem desirable, each of which shall be constituted in like manner as the Industrial Relations Committee.

EXHIBIT 12

EXECUTIVE ORDER

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In order to effectuate the policy of title I of the National Industrial Recovery Act, approved June 16, 1933, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of said National Industrial Recovery Act, hereby prescribe the following rules and regulations which shall have the effect of modifying any inconsistent provisions of any order, approval, rule, or regulation heretofore issued under title I of said act.

1. By reason of confusion and misapprehension which has arisen regarding the meaning of certain commercial bribery provisions included in codes heretofore approved by me, I hereby interpret all provisions to mean the following:

> No member of the industry shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. Commercial bribery provisions shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

2. I further order that if commercial bribery provisions are hereafter included in codes they shall conform to the foregoing.

3. This order is intended to relate only to commercial bribery provisions and is not intended to interfere with an industry, if it so desires, dealing specifically with the subject of premiums in any way it may or shall have proposed if approved by me.

FRANKLIN D. ROOSEVELT.

Approval recommended:

Hugh S. Johnson,
Administrator.

The White House,
November 27, 1933.

EXHIBIT 13

EXECUTIVE ORDER

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PROVIDING FOR THE SUBMISSION OF STATISTICAL INFORMATION BY PERSONS SUBJECT TO CODES OF FAIR COMPETITION

Pursuant to the authority vested in me by title I of the National Industrial Recovery Act, upon due consideration of the facts, and upon the report and recommendation of the Administrator for Industrial Recovery.

I, Franklin D. Roosevelt, President of the United States, do hereby order that every code of fair competition, agreement, and license heretofore approved be, and hereby is, modified to provide that, and every code of fair competition, agreement, and license hereafter approved be upon condition that, in addition to information required to be submitted to any code authority, all or any of the persons subject to such code, agreement, or license furnish such statistical information as the Administrator may deem necessary for the purposes recited in section 3 (a) of said act to such Federal and State agencies as the Administrator may designate; nor shall anything in any code, agreement, or license relieve any person of any existing obligation to furnish reports to Government agencies.

FRANKLIN D. ROOSEVELT.

Approval recommended:

Hugh S. Johnson,
Administrator.

The White House,

December 7, 1933.

EXHIBIT 14

OFFICE MEMORANDUM NO. 228

June 7, 1934

OPEN PRICE FILING, COSTS, PRICE CUTTING AND ACCOUNTING PROVISIONS IN CODES

The following is the policy of NRA on the above matters:

(1) Open Price Filing: Prices, discounts, rebates, allowances and terms and conditions of sale, shall be filed with a confidential disinterested agent of the Code Authority if any and if none, with an agency to be designated by NRA. Immediately upon receipt such data shall be noticed to all such members of the Industry and their customers as shall apply therefor and defray the cost thereof. No higher price shall be filed within 48 hours. No member of the Industry shall sell or offer to sell except at filed terms and conditions; nor shall he enter into any combination or conspiracy to fix price or intimidate others either by himself or in any such combination or conspiracy.

(Note: See Exhibit A for further guidance.)

(2) Costs and Price Cutting: (a) Any member of such code or of any other code or the customers of either may at any time complain to the Code Authority that any such filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. Such Code Authority shall within five days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of NRA which shall render a report and recommendation thereon to the Administrator.

(b) In an emergency, declared by the Administrator, after proper showing of cause, and for such time as the Administrator may determine, stated minimum prices may be approved by the Administrator.

(Note: See Exhibit B for further guidance.)

(3) Accounting Provisions: Codes should contain clauses recommending principles of cost finding appropriate to the Industry and approved by the Administrator, but no such methods shall be obligatory and none shall suggest uniform additions to total sales cost in the form of percentages or differentials designed to bring about arbitrary uniformity in costs or prices.

(Note: See Exhibit C for further guidance.)

(4) Adjustment of Codes: Pending codes and codes hereafter submitted shall be adjusted to these policies. Divisional Administrators shall seek through agreements with Code Authorities of approved Codes to amend them to conform with these policies and, wherever resistance is encountered, the subject shall be taken up with the Administrator.

By Direction of the Administrator:

C. A. Lynch,
Administrative Officer.

EXHIBIT "A".

OPEN PRICE FILING

1. NRA policy favors properly drawn open price provisions in codes where desired by the industry. The attached draft Article reflects approved policy and should be substantially followed.

2. The objective is to achieve fair competition, based on knowledge of competitive factors to the fullest extent possible without unduly curtailing private initiative or destroying incentives to any individual legitimately to extend his business.

3. Where industries believe that some waiting period is essential in order to accomplish the objectives outlined, the matter will be treated on its merits as in the case of any proposed departure from announced policy.

"ARTICLE _____; OPEN PRICE

"Section 1. Each member of the trade/industry shall file with a confidential and disinterested agent of the code authority, or, if none, then with such an agent designated by the Administrator, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this article referred to as 'price terms', which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the industry as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the code authority. Said price terms shall in the first instance be filed

within _____days after the date of approval of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the code authority in the preparation and distribution thereof and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid _____day period after the approval of this code. The code authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Administrator. Upon request the code authority shall furnish to the Administrator or any duly designated agent of the Administrator copies of any such lists or revisions of price terms.

"Section 2. When any member of the trade/industry has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

"Section 3. No member of the trade/industry shall sell or offer to sell any products/services of the trade/industry, for which price terms have been filed pursuant to the provisions of this article, except in accordance with such price terms.

"Section 4. No member of the industry shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this article to create."

EXHIBIT "C"

COSTS AND PRICE CUTTING

The attached draft Article reflects approved policy and should be substantially followed and administered in accordance with the following:

1. When there is no emergency it is NRA policy to avoid price fixing but also to prevent destructive price cutting in accordance with Section 1 of the annexed Article.

2. The following conditions may be deemed to require investigation to determine whether an emergency exists: (a) impairment of employment

or wage scales; (b) particularly high mortality of enterprises, especially small enterprises; or (c) panic in an industry or other special conditions thought by the Administrator to require stabilization by means of minimum price. When the Administrator believes that the declaration of an emergency might be advisable, the matter will be referred to the Research and Planning Division, notice of such fact being sent to the Advisory Council.

3. The Research and Planning Division shall examine all available evidence and analyze the probable effects of various possible minimum prices on total national production, general employment andgeneral recovery, production and consumption of the product of the industry in question, other phases of national life, and the interests of the industry in question to the extent compatible with the foregoing and shall render a written report of its findings and recommendations to the Administrator and furnish copies of said report to the Advisory Council.

4. If on the basis of this report the Administrator determines that an emergency should be declared, he will make such declaration and establish the minimum price effective under the circumstances. The declaration of an emergency will be accompanied by a statement of the facts upon which the declaration is based and an explanation of the plan which is being applied.

5. Emergencies will be declared only for particular products and for a state period, not longer than ninety days, subject to earlier termination or toextension, upon decision of the Administrator.

6. Remedial provisions will be put into effect subject to a plan of supervision, which it shall be the duty of the Research and Planning Division to devise, which will include the requirement of such financial, operating, employment, and other reports as shall be necessary to indicate the effect of the provision.

COSTS AND PRICE CUTTING.

Article ____

Section 1. The standards of fair competition for the industry with reference to pricing practices are declared to be as follows:

(a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the industry or of any other industry or the customers of either may at any time complain to the Code Authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority shall within 5 days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is

not concurred in by either party to the compl[illegible], all papers shall be referred to the Research and Planning Divisi[illegible] of NRA which shall render a report and recommendation thereon to the Administrator.

(b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.

(c) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of Section 2 hereof, is forbidden.

Section 2. Emergency Provisions:

(a) If the Administrator, after investigation shall at any time find both (1) that an emergency has arisen within the industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the determination of the stated minimum price for a specified product within the industry for a limited period is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the Act, the Code Authority may cause an impartial agency to investigate costs and to recommend to the Administrator a determination of the stated minimum price of the product affected by the emergency and thereupon the Administrator may proceed to determine such stated minimum price.

(b) When the Administrator shall have determined such stated minimum price for a specified product for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the National Industrial Recovery Act, he shall publich such price. Thereafter, during such stated period, no member of the industry shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Administrator may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

EXHIBIT "C".

COST FINDING AND ACCOUNTING

NRA will encourage proper cost finding and accounting provisions in codes. When such provisions are incorporated they should substantially conform to the following:

"Section _____. Cost Finding: The Code Authority shall cause to be formulated methods of cost finding and accounting capable of use by all members of the industry, and shall submit such methods to the Administrator for review. If approved by the

Administrator, full information concerning such methods shall be made available to all members of the industry. Thereafter, each member of the industry shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit the Code Authority, any agent thereof, or any member of the industry to suggest uniform additions, percentages or differentials or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices."

EXHIBIT 15

EXECUTIVE ORDER

Prescribing Rules and Regulations for the Interpretation and Application of Certain Labor Provisions of Codes of Fair Competition as They May Affect Handicapped Workers

In Codes of Fair Competition which have heretofore been approved or submitted for approval and in such Codes which may hereafter be submitted and approved, question has arisen or may arise as to whether the minimum wage and maximum hour provisions preclude those handicapped by physical or mental defect, age or other infirmity from their former opportunities for obtaining employment.

Pursuant to the Authority vested in me by Title I of the National Industrial Recovery Act, upon due consideration of the facts and upon the report and recommendation of the Administrator:

I, Franklin D. Roosevelt, President of the United States, in order to carry our the purposes of Title I of the National Industrial Recovery Act, do hereby order that no provision of any Code of Fair Competition, agreement, or license, which has heretofore been or may hereafter be approved, prescribed or issued pursuant to said Title of said Act shall be so construed or applied as to violate the following rules and regulations which are hereby promulgated and prescribed, to-wit:

1. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by a Code, if the employer obtains from the state authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employee.

2. Any approval order of a Code of Fair Competition, agreement or license heretofore approved, prescribed or issued pursuant to Title I of the National Industrial Recovery Act, if any necessity exists therefor in order to make these regulations effective, is hereby modified so as to permit and be conditional upon the full applications and operation of these regulations.

These regulations shall become effective immediately and shall thereupon be binding upon all industries and members thereof unless, and only to such extent as, prior to that date good cause to the contrary shall be shown to the Administrator for Industrial Recovery by any affected party or parties with reference to any trade, industry, or subdivision thereof.

FRANKLIN D ROOSEVELT

Approval Recommended:
Hugh S Johnson, Administrator

The White House
Feb. 17th 1934

EXHIBIT 16

OFFICE ORDER NO. 71

March 14, 1934.

STANDARDS OF HEALTH AND SAFETY.

In exercise of the President's power under the National Industrial Act to prescribe conditions of employment, the following provisions will hereafter be included in every code which has not, at this date, been formally submitted by the industry:

"Every employer shall provide for the safety and health of employees during the hours and at the places of their employment.

"Standards for safety and health shall be submitted by the code authority to the Administrator within six months after the effective date of the code."

These provisions, including similar ones now embodied in most codes, will be given execution in the following manner:

1. Each code authority will create a committee on safety and health which will study the number and causes of accidents and health hazards in the industry and report a comprehensive program.

2. In these programs developed by the committees on safety and health consideration will be given to the following:

   (a) A statement of the average accident experience in the industry; a comparision of the experience of employers most successful in reducing accidents; and a plan for uniform accident reporting in the industry.

   (b) Preparation of a statement showing the possible benefits to individual employers, individual employees, and the industry as a whole, through continuous organized safety efforts.

   (c) A recommended plan for organized safety work for various types and sizes of companies.

   (d) Minimum standards for safety and health for the industry.

By direction of the Administrator:

Alvin Brown

EXHIBIT 17

ADMINISTRATIVE ORDER NO. X-51

June 15, 1934

SAFETY AND HEALTH STANDARDS

Whenever, in accordance with the provisions of a Code of Fair Competition, a Code Authority submits to the Administrator standards for safety and health and such standards are approved by the administrator, the standards thus approved shall thereafter be part of such Code and shall be enforceable as such.

Hugh S. Johnson,
Administrator.

EXHIBIT 18

OFFICE MEMORANDUM NO. 232.

June 12, 1934.

Premiums.

The following policies will govern premium clauses in codes.

1. There should be no general provisions prohibiting the use of premiums.

2. Certain uses of premiums would constitute methods of evading trade practice provisions; for example, provisions against selling below cost and open-price provisions. The proper way to prevent such evasion of any trade practice provision is careful drafting of the provision in question. For example, in a provision prohibiting selling below cost, it should be provided that all premiums should be included in the computation of cost. Similarly, in an open price provision, it should be required that all terms and conditions of sale, including premiums, must be filed.

3. Although there should be no general prohibition against the use of premiums, the use of premiums in the following ways may be prohibited:

a. The use of premiums in ways which involve commercial bribery in any form.

b. The use of premiums in ways which involve lottery in any form. The term "lottery" should be construed to include, but without limitation, any plan or arrangement whereby the premium offered differ substantially in value from customer to customer of the same class, except as a result of differences in quantities purchased.

c. The use of premiums in ways which involve misrepresentation, or fraud, or deception in any form, including, but without limitation, the use of the word "free", "gift", "gratuity", or language of similar import in connection with the giving of premiums for the purpose or with the effect of misleading or deceiving customers.

d. The giving of premiums to any customers when such premiums are not offered to all customers of the same class in the trade area.

By direction of the Administrator:

G. A. Lynch,
Administrative Officer.

EXHIBIT 19

OFFICE MEMORANDUM

No. 316*

December 6, 1934.

PREMIUMS AND "FREE DEALS"

The following policies will govern clauses in codes relating to premiums or "free deals."

1. There should be no general provisions prohibiting the use of premiums or "free deals."

2. Certain uses of premiums or "free deals" would constitute methods of evading trade practice provisions; for example, open price provisions. The proper way to prevent such evasion of any trade practice provision is careful drafting of the provision in question. For example, in an open price provision, it should be required that all terms and conditions of sale, including premiums or "free deals" and conditions relating thereto, must be filed.

3. Although there should be no general prohibition against the use of premiums or "free deals," the use of premiums or "free deals" in the following ways may be prohibited:

(a) The use of premiums or "free deals" in ways which involve commercial bribery in any form.

(b) The use of premiums or "free deals" in ways which involve lottery in any form. The term "lottery" should be construed to include, but without limitation, any plan or arrangement whereby the premium or "Free deal" offered differs substantially in value from customer to customer of the same class, except as a result of differences in quantities purchased.

(c) The use of premiums or "free deals" in ways which involve misrepresentation, or fraud, or deception in any form. It should be noted that the use of the word "free," "gift," "gratuity," or language of similar import in connection with premiums or "free deals" can not be declared deceptive in and of itself. It will be proper, however, to prohibit the use of this or any other language with intent to deceive, or in such a way that it does in fact mislead or deceive customers in some material particular.

(d) The giving of premiums of "free deals" to any customers when such premiums or "free deals" are not offered to all customers of the same class in the trade area.

4. Office Memorandum No. 235 is hereby superseded.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN
Administrative Officer.

(*)Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment, Part II - 1746."

EXHIBIT 20

EXECUTIVE ORDER

MAKING PROVISION FOR A CLAUSE IN CODES OF FAIR COMPETITION RELATING TO COLLECTION OF EXPENSES OF CODE ADMINISTRATION

By virtue of and pursuant to the authority vested in me under the provisions of Title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said Title, I hereby order that the following clause or any appropriate modification thereof shall become effective as a part of any code of fair competition approved under said Title, upon application therefor (1) pursuant to the provisions of the code relating to amendments thereto or (2) by one or more trade or industrial associations or groups truly representative of the trade or industry or subdivision thereof covered by the code, if the Administrator for Industrial Recovery shall find that approval by him of such clause is necessary in order to effectuate the policy of Title I of said Act:

1. It being found necessary, in order to support the administration of this Code and to maintain the standards of fair competition established by this Code and to effectuate the policy of the Act, the Code Authority is authorized, subject to the approval of the Administrator:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code;

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary, (1) an itemized budget of its estimated expenses for the foregoing purposed, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Industry;

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and secure equitable contribution as above set forth by all such members of the Industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Only members of the Industry complying with the Code and contributing to the expenses of its administration as provided in Section 1 hereof shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefit of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

FRANKLIN D. ROOSEVELT

Approval recommended:
HUGH S. JOHNSON, Administrator
By G. A. Lynch, Administrative Officer

THE WHITE HOUSE,
April 14, 1934.

9810 (No. 6678)

EXHIBIT 21.

OFFICE MEMORANDUM NO. 267.

JULY 20, 1934.

CLASSIFICATION OF CUSTOMERS.

The following clause reflects NRA policy on this matter and should be substantially followed wherever provisions for classification of customers are included in codes:

> "The Code Autnority shall cause to be formulated and keep current a classification of all types of customers of the industry. Such classification shall be subject to the disapproval of the Administrator and shall contain: (a) A complete list of all of the classes of customers of the industry, including a class to cover every known type of customer; and (b) definitions or descriptions of the several classes in terms of functions performed, or in other appropriate terms such as purchasers of defined quantities.
>
> "After submission to the Administrator, if there is no disapproval or request for suspension of action within twenty (20) days, full information concerning the classification shall be made available to all members of the industry. No one shall by intimidation, coercion, or other undue influence cause or attempt to cause the inclusion of any customer in or the exclusion of any customer from any class of customers, or the exclusion of any class of customers from the classification, or the use of uniform or stipulated prices, discount, or differentials and each member of the industry may at all times classify his own customers in accordance with his own judgment."

No such proposed code provision nor any classification thereunder shall be approved if the same is designed or would tend to fix uniform prices, discounts or differentials, or to establish resale price maintenance, eliminate or suppress, or discriminate against any customer or class of customers.

Other proposed provisions concerning classification of customers are presumed to be contrary to policy.

By direction of the Administrator:

G. A. Lynch
Administrative Officer.

EXHIBIT 22.

OFFICE MEMORANDUM NO. 326*

JANUARY 5, 1935.

ADVERTISING ALLOWANCES

Manufacturers or other vendors selling goods to distributors frequently find themselves desiring to purchase from their customers an advertising or promotion service which their customers can render. In purchasing such services the vendors have become accustomed to make payment by "allowing" a certain reduction from what would otherwise be the price. The payments thus made have become known as "advertising allowances."

Code provisions declaring the giving of advertising allowances an unfair practice would not change the basic facts that sellers must price their goods to buyers and that certain buyers have promotion services which they are desirous of selling for which those who sell to them are willing to pay. The remedy for such suspicion, secrecy, confusion, and misrepresentation as may be connected with advertising allowances, lies in:

(a) Clearly separating and thus establishing the distinct identities of the two activities which are involved in giving advertising allowances

(b) Causing that part of the advertising allowance which is actually a price reduction to appear in prices - reported prices, if the industry or trade has an open price plan.

(c) Causing that part of the advertising allowance which is actually a payment for advertising or promotion service to appear as such with definite description of the service for which it is given, and with such publicity, where publicity is practicable, that it is unlikely that the payment will be more than the competitive worth of the services involved.

Accordingly, it is NRA policy that an industry desiring to regulate advertising allowances should not be permitted to do so by general prohibitions, by restrictions on the basis of products or types of distributors, or otherwise than in accordance with the following:

1. That no member of an industry or trade shall designate as an "advertising allowance", "promotion allowance" or similar term, any price reduction, discount, bonus, rebate, or other form of price allowance or concession, or any consideration for advertising or promotion services offered or given by him to any customer.

2. That no member of an industry or trade shall offer or give any consideration for advertising or promotion services to any customer except for definite and specific advertising or promotion services.

3. Agreements to purchase advertising services from customers shall be made in written contracts separate from sales contracts.

4. Such contracts shall specifically and completely set out the promotion services to be performed, together with the precise consideration to be paid therefor, the method of determining performance, and all other terms and conditions relating thereto.

5. Some arrangement for publicity may be made, where effective machinery therefor can be devised. In considering any arrangement for publicity, care should be taken to avoid machinery so cumbersome that its cost will outweigh benefits to be gained.

There is attached a draft section (Exhibit A) suggested for use in codes in which it is desired to regulate advertising allowances.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

*Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment - Basic Code - Trade Practices - Part II-3031.15" when released in Office Manual form.

EXHIBIT A

Section ___. No member of the trade/industry shall designate as an "advertising allowance", a "promotion allowance", or by a similar term, any price reduction, discount, bonus, rebate, concession, or other form of allowance, or any consideration for advertising or promotion services, offered or given by him to any customer.

No member of the trade/industry shall offer or give any consideration merely for "pushing", "advertising", or otherwise than for definite and specific advertising or promotion services. Such consideration shall be given only pursuant to a separate written contract therefor, which contract shall specifically and completely set forth the advertising or promotion services (in such manner that their specific character may be understood by other members of the trade/industry and their customers) to be performed by the recipient of said consideration, the precise consideration to be paid or given therefor by said member, the method of determining performances, and all other terms and conditions relating thereto.

The following are examples of provisions for publicity which may be found workable and desirable by particular industries:

Example 1. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a true copy thereof shall be filed by said member with a confidential and disinterested agent of the Code Authority (as provided for in this code), or, if none, then with such an agent to be designated by the National Industrial Recovery Board. Said agent shall maintain all copies of such contracts on file until six (6) months after the termination thereof, and shall make the same available at his office for inspection at all reasonable times by all members of the trade/industry, and all of their customers and shall distribute a true copy of any such contract to any member of the industry or any customer who applies therefor and offers to pay the cost actually incurred by the Code Authority in the actual preparation and distribution thereof; provided, that no such inspection or copy shall be permitted or made available to any person until permitted or made available to all members of the industry and their customers, as aforesaid. Upon request, said agent shall furnish to the National Industrial Recovery Board, or any duly designated agent of said Board, copies of any such contract.

Example 2. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a true copy thereof shall be filed with a confidential and disinterested agent of the Code Authority (as provided for in this code), or, if none, then with such an agent to be designated by the National Industrial Recovery Board. Said agent shall thereupon proceed to have copies of such contract published in a journal or journals or other appropriate medium of general circulation among members of the trade/industry.

EXHIBIT 23

OFFICE MEMORANDUM

NO. 331*

January 29, 1935

LIQUIDATED DAMAGES

The following policies will govern the subject of agreements for liquidated damages in connection with code provisions:

1. If an industry (trade) desires such an arrangement, its code should be amended to provide authority for members thereof to enter into a liquidate damages agreement, which agreement is to become effective only upon issuance of NRA consent thereto. A suggested code provision to that effect is attached.

2. The principles set forth in the Office Manual, Section II-1626, should be called to the attention of such industries (trades) for their guidance in the formulation of such agreements, and such principles should be adhered to as closely as the individual situation will permit in the consideration of such agreements by NRA.

By direction of the National Industrial Recovery Board:

W. A. Harriman,
Administrative Officer.

*Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment - Substantive Guides - Part II-1626" when released in Office Manual form.

Addenda to Office Memorandum No. 331

PROPOSED CODE PROVISION

Concerning

LIQUIDATED DAMAGES

"Any member of the industry (trade) may enter into an agreement with any other member or members of the industry (trade) providing for the payment of liquidated damages by any party thereto upon violation by him of any provision of the Code, provided, however, that such agreement shall become effective and binding on the parties thereto only after the execution thereof shall have received the consent of the National Recovery Administration."

EXHIBIT 24

EXECUTIVE ORDER

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PRESCRIBING A REGULATION PROHIBITING DISMISSAL OF EMPLOYEES FOR REPORTING ALLEGED VIOLATIONS OF CODES OF FAIR COMPETITION

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said title, I hereby prescribe the following rule and regulation:

No employer subject to a code of fair competition approved under said title shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any code of fair competition approved under said title.

All persons are hereby informed that section 10 (a) of the National Industrial Recovery Act prescribes a fine not to exceed five hundred dollars ($500) or imprisonment not to exceed six (6) months, or both, for the violation of any rule or regulation prescribed under the authority of said section 10 (a).

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,

May 15, 1934.

No. 6711

EXHIBIT 25

EXECUTIVE ORDER

NON-WAIVER OF CONSTITUTIONAL RIGHTS IN CONNECTION WITH CODES OF FAIR COMPETITION

By virtue of and pursuant to the authority vested in me by Title 1 of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195), and in order to effectuate the policy of said Title and to eliminate any confusion or misapprehension which may have arisen concerning the effect on constitutional rights of assent to, or cooperation under, Codes of Fair Competition, I hereby order that:

(1) It is understood that neither the Government nor any member of industry waives, or can properly insist that the other has waived, any constitutional right pertaining to the Government or to any individual by approving, assenting to, or cooperating under a Code of Fair Competition.

(2) The approval orders of all such codes heretofore approved are hereby modified to the extent necessary to make this Order a condition thereof, and this Order shall operate as a condition of the approval of any such code hereafter approved.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE
January 22, 1935.
(No. 6949)

EXHIBIT 26

EXECUTIVE ORDER

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PRESCRIBING RULES AND REGULATIONS FOR THE INTERPRETATION AND APPLICATION OF CERTAIN LABOR PROVISIONS OF CODES OF FAIR COMPETITION AS THEY MAY AFFECT CERTAIN HOMEWORKERS.

In Codes of Fair Competition heretofore or hereafter approved, which provide for the abolition of homework, the question has arisen or may arise as to whether the abolition of homework has precluded certain persons who are incapacitated for factory work from their former opportunities for obtaining employment.

Pursuant to the authority vested in me by Title I of the National Industrial Recovery Act and in order to carry out the purposes and policy of said Title of said Act, and upon due consideration of the facts and upon the report and recommendation of the Adminstrator,

I, FRANKLIN D. ROOSEVELT, President of the United States, do hereby order that no provision of any Code of Fair Competition heretofore or hereafter approved pursuant to said Title of said Act, shall be so construed or applied as to violate the following rules and regulations which are hereby promulgated and prescribed, to-wit:

1. A person may be permitted to engage in homework at the same rate of wages as is paid for the same type of work performed in the factory or other regular place of business if a certificate is obtained from the State authority or other officer designated by the United States Department of Labor, such certificate to be granted in accordance with instructions issued by the United States Department of Labor, provided

(a) Such person is physically incapacitated for work in a factory or other regular place of business and is free from any contagious disease; or

(b) Such person is unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or an invalid and both such persons are free from any contagious disease.

2. Any employer engaging such a person shall keep such certificate on file and shall file with the Code Authority for the trade or industry or subdivision thereof concerned the name and address of each worker so certificated.

This Order shall become effective immediately and shall be binding upon all trades, industries or subdivisions thereof and members thereof subject to Codes of Fair Competition in which homework is prohibited, and,

to the extent necessary to permit the full application and operation of the foregoing rules and regulations, shall operate as a condition upon any previous order approving any Code of Fair Competition under Title I of the National Industrial Recovery Act, and shall remain in effect until revoked or modified by my further order or by order of the Administrator for Industrial Recovery; provided, however, that this Order shall not apply to or affect Codes of Fair Competition heretofore or hereafter approved for food or allied products trades, industries or subdivisions thereof, which contain provisions prohibiting the manufacture and/or processing of food products in homes.

FRANKLIN D. ROOSEVELT

Approval Recommended:

HUGH S. JOHNSON

Administrator for Industrial Recovery

THE WHITE HOUSE

May 15, 1934.

No. 6711-A

EXHIBIT 37

MEMORANDUM

May 20, 1935

TO: Prentiss L. Coonley, Code Administration Director

FROM: Walter Mangum, Chairman, Code Planning Committee

SUBJECT: Recommended Trade Practice Provisions.

The following gauge was used as the basis for the tentative recommended provisions on Fair Trade Practices:

Group "A" provisions include those which, in the opinion of the Deputy, fulfill the following basic requirements:

1- Not contrary to public interest.
2- Susceptible to enforcement.
3- Non-discriminatory.
4- Recognized as desirable and required by the industry.
5- Sanctioned by custom.

Group "B" provisions include the requirements of Group "A", with the exception of the requirement that the same be sanctioned by custom.

Group "C" provisions include the requirements of Group "A", with the exception of the requirement that the same be sanctioned by custom, and otherwise might present certain problems of enforcement.

These provisions have been tentatively approved by our Legal Advisors for form and content.

Walter Mangum, Chairman,
Code Planning Committee

ARTICLE VII

TRADE PRACTICE RULES

CLASS "A" PROVISIONS

Rule 1. Deceptive Advertising and General Misrepresentation.

No member of the trade/industry shall publish advertising (whether printed, radio, display or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trademark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

Rule 2. Commercial Bribery.

No member of the industry shall give, permit to be given, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented part, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

Rule 3. Interference with Contracts.

No member of the industry shall wilfully induce or attempt to induce the breach of existing contracts between competitors and their customers by any false or deceptive means, or interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of hampering, injuring or embarrassing competitors in their business.

Rule 4. Defamation of Competitors.

No member of the trade/industry shall defame a competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, or questionable credit standing, or by other false representation, or by falsely disparaging the grade or quality of his goods.

Rule 5. False Invoicing

No member of the trade/industry shall knowingly withold from

or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

Rule 6. False Marking or Branding.

No member of the trade/industry shall brand or mark or pack goods in any manner which tends to deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods.

Rule 7. Secret Rebates and other Concessions.

No member of the trade/industry shall secretly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall a member of the trade/industry secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

Rule 8. Coercion.

No member of the industry shall enter into any agreement, understanding, combination or conspiracy with any other member of the industry to fix or maintain price terms, or cause or attempt to cause any member of the industry to change, fix or maintain price terms by the use of violence, intimidation or coercion.

CLASS "B" PROVISIONS

Rule 1. Consignment Selling.

No member of the industry shall sell or ship goods on consignment or memorandum.

Rule 2. Extended Dating.

Dating invoices as of any other date than the date of shipment is prohibited.

If it is desired to permit an extended dating it should read:

"Dating invoices more than (for example 60 days) after date of shipment," and "dating invoices more than 60 days after date of shipment is prohibited."

Rule 3. Standards.

To be included in Codes according to the needs and requirements of the particular industry desiring the same.

1. Within thirty (30) days after the effective date of the Code, the Code Committee shall establish a permanent standards committee, two members of which shall be appointed by the National Industrial Recovery Board, to represent Government and Consumer interests.

2. This Committee shall:

(a) Make studies and investigations for the establishment of classifications, dimensional standards, standards of quality (grades) and labeling of the products of this industry, in cooperation with the American Standards Association or the National Bureau of Standards of the United States Department of Commerce, and submit recommendations based upon such studies to the Code Committee within six (6) months of the date of the Committee's appointment.

(b) Propose appropriate revisions of approved standards from time to time.

(c) Advise the Trade Practice Complaints Committee concerning the enforcement of all such standards as established and approved.

3. Upon submission of the Committee's findings to the Code Committee, the Code Committee shall immediately submit such standards either to the American Standards Association for consideration and approval or to the National Bureau of Standards of the United States Department of Commerce for consideration and promulgation; provided, however, that in case of disagreement within the Committee the Code Committee shall determine, subject to the approval of the National Industrial Recovery Board, the nature of the standards to be submitted to such standardizing agencies.

4. After promulgation and such review as the National Industrial Recovery Board may determine, these standards may be approved as a Fair Trade Practice to be mandatory upon all members of this Industry pending the approval of subsequent standards or revisions of standards which may be established from time to time through the same procedure as set forth above.

5. It is further provided, however, that no standard shall be approved by the National Recovery Administration which may be construed in any material particular as prohibiting the manufacture and/or sale of non-standard industry products which are accurately labeled and/or clearly identified to purchasers as to their deviation from such standards, if such non-standard products are in no way harmful to the users.

Rule 4. Design Protection Plan Number I.
Mandatory Registration

1. Design Protection.

No member of this industry shall take orders for, or use in the manufacture of any products of this industry, any design embodied in such products unless an exact copy thereof has been registered with the Design Registration Bureau of the industry and unless such member is the holder of the registration certificate or has obtained the written consent of the member making the registration. This rule shall not apply to such standard or stable designs compiled by the said Registration Bureau and on file therein, and provided that nothing herein contained shall limit or deprive any member of this industry of any rights or benefits existing under the present patent or copyright laws.

(a) The term "design" as used in this industry shall mean and be limited to the effect obtained by a combination of such of the following elements as are embodied in a product manufactured in this industry: (1) the shape resulting from the method of cutting, sewing, draping, and pressing; (2) the combination of fabrics and colors, including their use and placement; (3) the decoration, including kind and placement; provided that the term "design" shall not include style trend.

2. Power and Duties of Design Registration Bureau.

There shall be designated by the Code Committee, subject to the approval of the National Industrial Recovery Board, an impartial agency to be known as the "Design Registration Bureau". Said Bureau shall have the following powers and duties, subject to such rules and regulations as may be issued by the National Industrial Recovery Board:

(a) Said agency shall compile and make permanent a list of all standard or stable designs now recognized as such in this industry, and upon completion of such compilation shall make such list available to all members of this industry.

(b) Following completion of the compilation of such list of standard or stable designs the said agency shall not accept for registration any design, the identical design of which is contained in said compiled list, or any design previously registered, provided that whenever a design so submitted is rejected for registration on the grounds that it is either contained in the compiled list, or has been previously registered by said Bureau, the rejected application may be referred for determination to an arbiter agreed upon by the Code Committee and the member whose registration was rejected. Provided that any design accepted for registration must be used within three months after its registration, otherwise said design shall be classified as a stable or standard design, and provided further that after one year from the date of its registration the

said registered design shall be classified as a stable or standard design.

(c) The Code Committee shall have the right to require a fee to be paid by the member of the industry submitting the design for registration, the amount of which fee shall be recommended by the Code Committee and approved by the National Industrial Recovery Board.

Design Protection Plan Number 2.
No Registration.

No member of this industry shall use in the manufacture of his products, nor take orders for such products, which embody a design previously used and owned by any other member of this industry without first obtaining written permission to use such design from said prior user, provided that this prohibition shall not apply to standard or stable designs used in the industry, and provided further that nothing herein contained shall limit the protection or right granted under the existing patent and copyright laws.

(a) The term "design" as used in this industry shall mean and be limited to the effect obtained by a combination of such of the following elements as are embodied in a product manufactured in this industry: (1) the shape resulting from the method of cutting, sewing, draping, and pressing; (2) the combination of fabrics and colors, including their use and placement; (3) the decoration, including kind and placement; provided that the term "design" shall not include style trend.

(b) Any complaint made to the Code Committee under this provision shall be referred to an impartial arbiter or commission agreed upon by the person complained of and the Code Committee and such determination made by such impartial arbiter or commission shall be subject to review by the National Industrial Recovery Board.

EXHIBIT 28

MEMORANDUM

May 20, 1935

TO: Mr. Prentiss L. Coonley, Code Administration Director

FROM: Walter Mangum, Chairman, Code Planning Committee

SUBJECT: Wage Provisions to be used in Code Revision

Attached are the Wage Provisions recommended by the Code Planning Committee for your consideration during code revision.

As we are working against time, our tentative recommendations on each article will be sent you as completed, rather than waiting until the entire draft is finished. The attached provisions have not yet been put into legal phraseology by the legal division, as we desire to receive the comments of the Division Administrators, the various Boards and other parties before making our final recommendations. Please bear in mind that these are merely tentative suggestions, and should be so considered.

Our recommendations will be divided into two parts:

(a) Provisions which we think should be adopted by every industry, unless extremely good reason to the contrary can be shown.

(b) Provisions, which will be included in an Appendix attached to the draft code, will consist of those which are deemed not contrary to policy, but which are to be used only when the needs of a particular industry make them practicable.

Attention is drawn to the fact that many wages provisions heretofore in codes are omitted. This is the result of numerous conferences with various interested parties in the organization, and many hours of discussion by the committee. We feel that simplification is imperative, and to that end as I will mention further on, certain provisions have been suggested to go into the Appendix, giving our reasons for having failed to recommend other specific provisions which were sent us for consideration.

We have changed the wording of Section 1 and Sections 2-A, B and C to read "no employer shall pay" rather than the old wording "no employee shall be paid less than." The reason for this is obvious.

Section 1 with this change is the same as in the present Model Code, except we have added "and/or sex". Since wage adjustments are presumably based on locality, and/or population, and/or sex, it is thought this last should be added. This also applies to Sections 2-A and 2-B.

Section 3 on Piecework Compensation, we feel is clearer than the present provisions, and will be more readily enforceable. The alternative clause is given because experience has shown instances where labor is of a poor quality, and/or where the labor works spasmodically, and an hourly minimum guarantee is unenforceable.

Section 4 covering Payment of Wages, we feel is clearer than the one generally used in codes, and affords the employee more protection.

Section 5 follows Executive Order 6606-F with two exceptions. We feel that the worker should have the right to apply for a certificate, as we believe that would more readily facilitate his obtaining employment if the employer is not put to the trouble of obtaining a certificate. At present, Code Authorities are required to submit monthly a list of all such employees, and we feel that if such a list is originally submitted, and then a monthly report made of changes, this will be sufficient.

Section 6 on Learners, we believe to be simpler and clearer, although it is longer than the general provision now in use. The old provision has resulted in innumerable requests for interpretations, and we are hopeful that the suggested section will present this in the future. The apprentice section will be covered in the general labor provisions.

Since we are making our recommendations from a practical viewpoint, we are omitting from the draft certain provisions about which there is a difference of opinion regarding enforceability. As an example, a clause which has proved very troublesome is "Wages Above the Minimum." We do not feel this should be included in the draft itself, but that a statement should be included in the Appendix to the effect that where industries desire classified wage scales or plural minima, that it is not contrary to policy to include them in the code. This also applies to provisions covering wages for new employees, part time wages and vacations.

Other recommendations made to the committee were considered, and failure to mention any specific provision does not mean that they were not given thoughful consideration, but that we felt it inadvisable to include them in the draft code. The committee not only considered every recommendation sent it, but all matter on the subject that it could obtain in the time at its disposal.

Provisions covering area agreements, female employees performing substantially the same work transportation, employment privileges, and provisions covering wages for certain legal holidays will all be covered by sections in the Appendix. The substance of these sections is now with the legal division, and as soon as they are put into legal phraseology will be sent to you for consideration.

Walter Mangum
Chairman, Code Planning Committee

ARTICLE IV

WAGES

MINIMUM WAGES

Section 1. No employer shall pay any employee in any pay period less than at the rate of _____cents per hour, except as otherwise herein provided.

(Minimum wage adjustment based on locality and/or population, and/or sex if appropriate, may be indicated here.)

OFFICE AND CLERICAL EMPLOYEES

Section 2-A. No employer shall pay any clerical or office employee in any pay period less than at the rate of _____dollars (_____) per week.

(Minimum wage adjustment based on locality and/or population, and/or sex if appropriate, may be indicated here.)

Section 2-B. No employer shall pay any watchman or guard in any period less than at the rate of _____ dollars ($_____) per week.

(Minimum wage adjustment based on locality and/or population, and/or sex if approriate, may be indicated here.)

Section 2-C. No employer shall pay any office boy or girl less than (80) per cent of the rate specified in Section 2-A of this Article. The number of such employees shall not exceed _____ per cent of the total number of office employees, provided however, that every employer shall be allowed at least one office boy or girl.

PIECEWORK COMPENSATION

Section 3-A. This Article establishes minimum rates of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piecework, or other basis.

Section 3-B. Pay for piece rates shall be computed on the basis of not more than a _____day period, and shall yield not less than the minimum rate of pay established under Section 1. Where overtime is utilized, such piece rates shall be increased in the same proportion as the overtime rate is to the minimum established in Section 1 and shall yield not less than the minimum overtime wage.

If shall be in accord with policy for suitable industries to have a piece rate clause as follows:

"The industry may establish piece or quantity rates with approval of NRA without an hourly minimum guarantee."

PAYMENT OF WAGES

Section 4-A. Payment of all wages due shall be made in lawful currency or by negotiable check or draft therefor, payable on demand at par, provided that reasonable facilities are available for cashing such check.

Section 4-B. Time of Payment and Deductions. Except as otherwise provided, wages and salaries shall become due and payable at least semi-monthly, with not to exceed _____ (___) calendar days holdover. Wages and salaries shall be exempt from all deductions, charges or fines, except such as are voluntarily consented to by the employee, or authorized by law. Employers or their agents shall not directly or indirectly accept rebates on such wages or salaries.

HANDICAPPED WORKERS

Section 5. A person whose earning capacity is limited because of age, physical or mental handicap or other infirmity, may be employed on light work at a wage below the minimum established by the Code, if the employee or the employer obtains from the State authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. If any employer employs any such person or persons, he shall file with the Code Authority a list within 30 days after the Code is approved of such employees and whenever there is a change in the number of such employees the employees shall file with the Code Authority within 30 days after any such change showing the discharge of any such employee and/or the addition of any such employee with the wages paid and the maximum hours of work of such newly hired employee.

LEARNERS

Section 6-A. Notwithstanding the provisions of Article IV, Section 1, learners, as hereinafter defined, to a number hereinafter permitted, may be employed at not less than_____per cent of the minimum wage specified in Article IV, Section 1, or, if compensated on a piece-work rate, at not less than the employer's standard piece rate for the occupation in which the learner is engaged.

Each employer may employ one learner for each_____per cent of the total number of employees, and in any case each employer may employ at least one learner.

Section 6-B. A learner as used in this Code is an employee who has actually worked less than_____hours (consecutive or non-consecutive) at the occupation in which he is engaged.

Section 6-C. Upon the termination of a learner's employment, the employer shall sign and give him a card bearing the learner's name, stating the occupation in which he has been employed as learner for that employer, and the number of hours so employed.

Section 6-D. When a learner has completed _____ hours actually worked in an occupation, in the employ of one or more employers his employer shall sign and give him a card bearing the learner's name, the occupation in which he has been so employed and stating that he is no longer a learner in such occupation.

Section 6-E. No employer shall employ a learner at less than the minimum wage specified in this Section and no employer shall employ a greater number of learners than is authorized by this Section at less than the minimum wage prescribed by Article IV, Section 1.

MEMORANDUM

May 22, 1935

TO: Prentiss L. Coonley, Code Administration Director

FROM: Walter Mangum, Chairman Code Planning Committee

SUBJECT: General Labor Provisions

Attached hereto find the recommendations of the Committee on the above mentioned provisions. These are substantially the same as those in the present Model Code, with the addition of Sections 4, 5 (b), 8 and 9, which are added to conform with the Executive and Administrative Orders issued since the publication of the Model Code. Section 2 (Section 7 (a)) was quoted from the so-called Harrison Bill. This, of course, will be amended to conform with the law as finally passed.

The present thought is that the Sections recommended in Article V should be mandatory in all codes, but it is quite likely that on final revision, Section 8 and 9 will go into the Appendix. The Sections in the Appendix are those which are not applicable to all industries, but which may be adopted when deemed necessary. On the same theory, it is quite likely that Section 1 of the Appendix will be transferred to Article V itself and may be thus made mandatory.

These provisions are now in the hands of the Legal Division for approval as to phraseology.

Walter Mangum, Chairman
Code Planning Committee

ARTICLE V

GENERAL LABOR PROVISIONS

CHILD LABOR

Section 1. No person under eighteen (18) years of age shall be employed in the industry except as (list here specific occupations, such as office boys, office girls, messengers, etc.). No person under sixteen (16) years of age shall be employed in the industry in any capacity. In any State any employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit, duly signed by the Authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

EMPLOYERS AND EMPLOYEES

Section 2.

(a) Every code of fair competition or agreement approved, prescribed, or entered into under this title shall contain the following statement of rights of employees, which are hereby declared and affirmed: (1) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and (2) no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(b) All employers in the trade or industry or sub-division thereof with respect to which any such code or agreement is in effect shall comply with the requirements of subsection (a) and with the maximum hours of labor, minimum wages and other conditions of employment set forth in any such code or agreement.

SUBTERFUGE

Section 3. No employer shall reclassify employees or duties of occupations performed or engage in any subterfuge, so as to defeat the purposes or provisions of the Act or of this Code.

DISMISSAL FOR COMPLAINTS FORBIDDEN

Section 4. No employer shall dismiss or demote any employee for making a complaint or giving evidence with respect to any alleged violation of the provisions of this code of fair competition. (Executive Order No. 6711, May 15, 1934.)

EXISTING LAWS AND LABOR AGREEMENTS

Section 5.

(a) No provision thereof shall supersede any Federal, State or Municipal law or any labor agreement, which establishes more stringent requirements as to age of employees, wages, hours of work, or general working conditions than are established in this code.

(b) No provision in this code shall supersede any provisions of a bona-fide Labor agreement now in force between members of the trade/industry and their employees which provides higher wages, shorter hours, or better working conditions than those prescribed by this code, or which provide specific arrangements as to methods of wage payments.

SAFETY AND HEALTH

Section 6. Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment. (*). Standards for safety and health shall be submitted by the Code Committee to the National Industrial Recovery Board for approval within six (6) months after the effective date of this code. After approval, such standards shall become the minimum standards of safety and health for all members of the industry and shall thereafter be a part of this code and enforcible as such.

APPRENTICESHIP

Section 7. Every apprentice hired by a member of this industry shall be engaged in accordance with Executive Order No. 6750-C. June 27, 1934.

CONTRACTING

Section 8. This provision is being given further consideration by the Committee.

COMPANY TOWN CLAUSE

Section 9. No employee other than maintenance or supervisory men or those necessary to protect property shall be required as a condition of employment to live in homes rented from or designated by the employer. No employee shall be required as a condition of employment to trade at any store or subscribe to any services owned or designated by his employer or his agents.

(*) For industries with homework, insert: No work shall be done or permitted in tenements, private houses, basements, or in any buildings unsanitary or unsafe on account of fire risks.

POSTING

Section 10. Every employer shall post and keep posted the labor provisions of this Code in accordance with rules and regulations prescribed by the National Industrial Recovery Board.

APPENDIX

HAZARDOUS OCCUPATIONS

Section 1. No person under eighteen (18) years of age, except apprentices, shall be employed in operations or occupations which are hazardous in nature or dangerous to health. The Code Committee shall submit to the National Industrial Recovery Board for approval within _____ days from the effective date of the code a list of such operations or occupations. In any state an employer shall be deemed to have complied with this provision as to age if he shall have on file a valid certificate or permit duly signed by the authority in such state empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

NOTICE OF DISCHARGE

Section 2. No employee who has been regularly employed for four (4) weeks with any one establishment may be discharged or laid off without a prior notice of one week.

HOMEWORK

Section 3. No homework shall be allowed except as hereinafter provided:

1. A person may be permitted to engage in homework at the same rate of wages as is paid for the same type of work performed in the factory or other regular place of business if a certificate is obtained from the State authority or other officer designated by the United States Department of Labor, such certificate to be granted in accordance with instructions issued by the United States Department of Labor, provided:

(a) Such person is physically incapacitated for work in a factory or other regular place of business and is free from any contagious disease; or

(b) Such person is unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or an invalid and both such persons are free from any contagious disease.

2. Any employer engaging such a person shall keep such certificate on file and shall file with the Code Committee for the trade or industry or sub-division thereof concerned the name and address of each worker so certificated.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority. the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No 18, Contents of Code Histries, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
Part A. Introduction
Part B. Control of Hours and Reemployment
Part C. Control of Wages
Part D. Control of Other Conditions of Employment
Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approve Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their Part in the Administration of the NIRA
Part A. Introduction
Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insigaia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

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THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, Payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
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Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

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